

FEDERAL REGISTER

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Washington, Tuesday, May 29, 1956

TITLE 5—ADMINISTRATIVE PERSONNEL

Chapter I—Civil Service Commission

PART 6—EXCEPTIONS FROM COMPETITIVE SERVICE

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Effective upon publication in the FEDERAL REGISTER, paragraphs (a) (1) and (b) (5) of § 6.114 are amended as set out below.

§ 6.114 Department of Health, Education, and Welfare—(a) St. Elizabeths Hospital. (1) Three Medical Officers (Surgical Resident).

(b) Public Health Service.
(5) Medical and dental internes, externes, and residents; and student nurses.

(R. S. 1753, sec. 2, 22 Stat. 403; 5 U. S. C. 631, 633)

UNITED STATES CIVIL SERVICE COMMISSION,

[SEAL] WM. C. HULL,
Executive Assistant.

[F. R. Doc. 56-4199; Filed, May 28, 1956; 8:47 a. m.]

TITLE 16—COMMERCIAL PRACTICES

Chapter I—Federal Trade Commission

[Docket 6518]

PART 13—DIGEST OF CEASE AND DESIST ORDERS

LUXURIOUS WOOLLENS, LTD., ET AL.

Subpart—Furnishing means and instrumentalities of misrepresentation or deception: § 13.1055 Furnishing means and instrumentalities of misrepresentation or deception. Subpart—Invoicing products falsely: § 13.1108 Invoicing products falsely: Wool Products Labeling Act. Subpart—Misbranding or mislabeling: § 13.1190 Composition: Wool Products Labeling Act. Subpart—Misrepresenting oneself and goods—Goods: § 13.1590 Composition: Wool Products Labeling Act; § 13.1647 Guarantee—statutory: Wool Products Labeling Act. Sub-

part—Neglecting, unfairly or deceptively, to make material disclosure: § 13.1845 Composition: Wool Products Labeling Act.

(Sec. 6, 38 Stat. 721; 15 U. S. C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended, secs. 2-5, 54 Stat. 1128-1130; 15 U. S. C. 46, 68-68c) [Cease and desist order, Luxurious Woollens, Ltd., et al., New York, N. Y., Docket 6518, May 11, 1956]

In the Matter of Luxurious Woollens, Ltd., a Corporation, Max Wasserman, Individually and as an Officer of the Corporation; and Paul A. Raich, Individually and as General Manager of the Corporation

This proceeding was heard by a hearing examiner on the complaint of the Commission—charging a corporation and its officers, with place of business in New York City, with violation of the Wool Products Labeling Act through misrepresenting the percentage of beaver fur in certain wool products on sales invoices and shipping memoranda and on attached labels, and through furnishing similar labels to customers for attachment to garments manufactured from respondents' wool products; through furnishing false guaranties that certain of their wool products were not misbranded; and through failing to label certain products as required by the act—and an agreement between the parties providing for entry of a consent order.

On this basis, the hearing examiner made his initial decision and order to cease and desist which became, on May 11, 1956, the decision of the Commission.

The order to cease and desist is as follows:

It is ordered, That the respondent, Luxurious Woollens, Ltd., a corporation; its officers; the respondent, Max Wasserman, individually and as an officer of the corporation; the respondent, Paul A. Raich, individually and as General Manager of the corporation; and respondents' representatives, agents and employees, directly or through any corporate device, in connection with the introduction or manufacture for introduction into commerce, or the offering for sale, sale, transportation or distribution in commerce (as "commerce" is defined in the Federal Trade Commission Act and the Wool

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CFR SUPPLEMENTS

(As of January 1, 1956)

The following Supplements are now available:

Title 14: Parts 1-399 (\$2.50)
Titles 28-29 (\$1.25)

Previously announced: Title 3, 1955 Supp. (\$2.00); Titles 4 and 5 (\$1.00); Title 7: Parts 1-209 (\$1.25); Title 8 (\$0.50); Title 9 (\$0.70); Titles 10-13 (\$0.70); Title 14: Part 400 to end (\$1.00); Title 15 (\$1.00); Title 16 (\$1.25); Title 17 (\$0.60); Title 18 (\$0.50); Title 19 (\$0.50); Title 20 (\$1.00); Title 21 (Rev., 1955) (\$5.50); Titles 22 and 23 (\$1.00); Title 24 (\$0.75); Title 25 (\$0.50); Title 26: Parts 1-79 (\$0.35), Parts 80-169 (\$0.50), Parts 170-182 (\$0.30), Parts 183-299 (\$0.35), Part 300 to end, Ch. I, and Title 27 (\$1.00); Titles 30 and 31 (\$1.25); Title 32: Parts 1-399 (\$0.60), Parts 700-799 (\$0.35), Parts 800-1099 (\$0.40), Part 1100 to end (\$0.35); Title 32A (Rev., 1955) (\$1.25); Titles 35-37 (\$1.00); Titles 40-42 (\$0.65); Title 49: Parts 1-70 (\$0.60), Parts 71-90 (\$1.00), Parts 91-164 (\$0.50), Part 165 to end (\$0.65)

Order from Superintendent of Documents, Government Printing Office, Washington 25, D. C.

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Products Labeling Act) of piece goods or other "wool products" (as "wool products" are defined in the Wool Products Labeling Act), do forthwith cease and desist from:

- Misbranding such products by:
 - Attaching or using stamps, tags, labels or other means of identification which represent that such products contain a certain percentage of beaver hair or fiber which is contrary to fact;
 - Otherwise falsely or deceptively stamping, tagging, labeling or identifying such products as to the character or amount of their constituent fibers;
 - Failing to affix securely on each such product a stamp, tag, label or other means of identification showing in a clear and conspicuous manner:

(a) The percentage of the total fiber weight of such wool product (exclusive of ornamentation not exceeding five per centum of the total fiber weight) of (1) wool, (2) reprocessed wool, (3) reused wool, (4) each fiber other than wool where the percentage of weight of such fiber is five per centum or more, and (5) the aggregate of all other fibers;

(b) The maximum percentage of the total weight of such wool product, of any non-fibrous loading, filling or adulterating matter;

(c) The name or the registered identification number of the manufacturer of such wool product or of one or more persons engaged in introducing such wool product into commerce, or in the offering for sale, sale, transportation, distribution, or delivery for shipment of such wool product in commerce (as "commerce" is defined in the Wool Products Labeling Act of 1939).

B. Furnishing false guaranties that piece goods, or other wool products (as "wool products" are defined in the Wool Products Labeling Act) are not misbranded under the provisions of the Wool Products Labeling Act, when there is reason to believe that the wool products

so guaranteed may be introduced, sold, transported, or distributed in commerce.

Provided, That the foregoing provisions concerning misbranding shall not be construed to prohibit acts permitted by paragraphs (a) and (b) of section 3 of the Wool Products Labeling Act of 1939; and

Provided further, That nothing contained in this order shall be construed as limiting any applicable provisions of said Act or the Rules and Regulations promulgated thereunder.

It is further ordered, That the respondent, Luxurious Woollens, Ltd., a corporation; its officers; the respondent, Max Wasserman, individually and as an officer of the corporation; the respondent, Paul A. Raich, individually and as general manager of the corporation; and respondents' agents, representatives, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution in commerce (as "commerce" is defined in the Federal Trade Commission Act) of piece goods, or other wool products, do forthwith cease and desist from:

A. Misrepresenting in invoices, by labels separately furnished or in any other manner the character or amount of the constituent fibers contained in such products.

B. Furnishing to or placing in the hands of others stamps, tags, or labels by means of which the respondents' products, or garments made from them, may be falsely or deceptively stamped, tagged, labeled or otherwise identified, either as to the character or amount of their constituent fibers or in any other respect.

By "Decision of the Commission", etc., report of compliance was required as follows:

It is ordered, That the respondents herein shall within sixty (60) days after service upon them of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with the order to cease and desist.

Issued: May 11, 1956.

By the Commission.

[SEAL] ROBERT M. PARRISH,
Secretary.

[F. R. Doc. 56-4192; Filed, May 28, 1956;
8:46 a. m.]

[Docket 6509]

PART 13—DIGEST OF CEASE AND DESIST ORDERS

VANCOUVER FUR FACTORY

Subpart—Advertising falsely or misleadingly: § 13.30 Composition of goods: Fur Products Labeling Act; § 13.73 Formal regulatory and statutory requirements: Fur Products Labeling Act; § 13.135 Nature: Product or service. Subpart—Invoicing products falsely: § 13.1108 Invoicing products falsely: Fur Products Labeling Act. Subpart—

Misbranding or mislabeling: § 13.1190 Composition: Fur Products Labeling Act; § 13.1212 Formal regulatory and statutory requirements: Fur Products Labeling Act; § 13.1260 Nature. Subpart—Misrepresenting oneself and goods—Goods: § 13.1590 Composition: Fur Products Labeling Act; § 13.1623 Formal regulatory and statutory requirements: Fur Products Labeling Act; § 13.1635 Nature: Fur Products Labeling Act. Subpart—Neglecting, unfairly or deceptively, to make material disclosure: § 13.1845 Composition: Fur Products Labeling Act; § 13.1852 Formal regulatory and statutory requirements: Fur Products Labeling Act; § 13.1870 Nature: Fur Products Labeling Act.

(Sec. 6, 38 Stat. 721; 15 U. S. C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended; sec. 8, 65 Stat. 179; 15 U. S. C. 45, 69f) [Cease and desist order, William Overton v. a. Vancouver Fur Factory, Vancouver, Wash., Docket 6509, May 10, 1956]

In the Matter of William Overton, an Individual Trading as Vancouver Fur Factory

This proceeding was heard by a hearing examiner on the complaint of the Commission—charging a fur dealer with false advertising, misbranding, and false invoicing of his fur products in violation of the Fur Products Labeling Act in that he failed to disclose the names of animals producing the fur or that certain products contained artificially colored fur, set forth names of animals other than the real source of furs, failed to maintain adequate records supporting purported claims of savings, and failed to attach labels or failed to set forth information as required on attached labels and on invoices—and an agreement between the parties for entry of a consent order.

On this basis, the hearing examiner made his initial decision and order to cease and desist which became, on May 10, 1956, the decision of the Commission.

The order to cease and desist is as follows:

It is ordered, That respondent, William Overton, individually or trading as Vancouver Fur Factory or under any other trade name, and respondent's representatives, agents, and employees, directly or through any corporate or other device, in connection with the introduction, or the sale, advertising or offering for sale, or the transportation or distribution of any fur product in commerce, or in connection with the sale, advertising, offering for sale, transportation or distribution of fur products which have been made in whole or in part of fur which had been shipped and received in commerce, as "commerce," "fur," and "fur product" are defined in the Fur Products Labeling Act, do forthwith cease and desist from:

A. Misbranding fur products by:

1. Failing to affix labels to fur products showing:

a. The name or names of the animal or animals producing the fur or furs contained in the fur product as set forth in the Fur Products Name Guide and as prescribed under the rules and regulations;

b. That the fur product contains or is composed of used fur when such is a fact;

c. That the fur product contains or is composed of bleached, dyed, or otherwise artificially colored fur when such is a fact;

d. That the fur product is composed in whole or in substantial part of paws, tails, bellies or waste fur when such is a fact;

e. The name, or other identification issued and registered by the Commission, of one or more persons who manufactured such fur product for introduction into commerce, introduced it into commerce, sold it in commerce, advertised or offered it for sale in commerce, or transported or distributed it in commerce;

f. The name of the country of origin of any imported furs used in the fur product.

2. Setting forth, on labels attached to fur products, the name or names of any animal or animals other than the name or names provided for in paragraph A (1) (a) above.

3. Setting forth on labels attached to fur products:

a. Required information in abbreviated form;

b. Non-required information mingled with required information;

c. Required information in handwriting;

4. Failing to show, on labels attached to fur products, all of the required information on one side of such labels.

B. Falsely or deceptively invoicing fur products by:

1. Failing to furnish invoices to purchasers of fur products showing:

a. The name or names of the animal or animals producing the fur or furs contained in the fur product as set forth in the Fur Products Name Guide and as prescribed under the rules and regulations;

b. That the fur product contains or is composed of used fur when such is a fact;

c. That the fur product contains or is composed of bleached, dyed, or otherwise artificially colored fur when such is a fact;

d. That the fur product is composed in whole or in substantial part of paws, tails, bellies, or waste fur when such is a fact;

e. The name and address of the person issuing such invoices;

f. The name of the country of origin of any imported furs contained in the fur product.

2. Setting forth required information in abbreviated form.

3. Failing to show the item number or mark of fur products on the invoices pertaining to such products, as required by Rule 40 of the rules and regulations.

C. Falsely or deceptively advertising fur products, through the use of any advertisement, representation, public announcement, or notice which is intended to aid, promote or assist, directly or indirectly, in the sale or offering for sale of fur products, and which:

1. Fails to disclose:

a. The name or names of the animal or animals producing the fur or furs contained in the fur products as set forth

in the Fur Products Name Guide and as prescribed under the rules and regulations;

b. That the fur products contain or are composed of bleached, dyed, or otherwise artificially colored fur when such is a fact;

2. Contains the name or names of any animal other than the name or names of the animals provided for in paragraph C (1) (a) above.

3. Makes claims or representations as to value or savings, unless there are maintained by respondent full and adequate records disclosing the facts upon which such claims or representations are based.

By "Decision of the Commission", etc., report of compliance was required as follows:

It is ordered, That the respondent herein shall within sixty (60) days after service upon him of this order, file with the Commission a report in writing setting forth in detail the manner and form in which he has complied with the order to cease and desist.

Issued: May 10, 1956.

By the Commission.

[SEAL] ROBERT M. PARRISH,
Secretary.

[F. R. Doc. 56-4193; Filed, May 28, 1956;
8:46 a. m.]

TITLE 14—CIVIL AVIATION

Chapter II—Civil Aeronautics Administration, Department of Commerce

[Amdt. 8]

PART 601—DESIGNATION OF CONTROL AREAS, CONTROL ZONES, AND REPORTING POINTS

ALTERATIONS

Correction

In F. R. Doc. 56-4099, appearing at page 3495 of the issue for Friday, May 25, 1956, "§ 601.607" under item 16 should read "§ 601.6077."

TITLE 17—COMMODITY AND SECURITIES EXCHANGES

Chapter II—Securities and Exchange Commission

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

EXEMPTION OF CERTAIN ACQUISITIONS OF SECURITIES UNDER CERTAIN PLANS

The Commission today adopted an amendment of § 240.16b-3 (Rule X-16B-3) in the form set forth below.

Section 240.16b-3, as adopted February 25, 1949, sought to exempt from section 16 (b) of the act certain transactions involving securities acquired under bonus, profit-sharing or similar plans. On August 16, 1955, in Release No. 5209, the Commission published for comment a revision proposal which was not intended to change the meaning and scope of the rule but rather to clarify the ap-

plication of its provisions in accordance with interpretations which the Commission has heretofore given. As a result of an analysis of the comments received and a further review of the problem, a revised amendment proposal was published for further public comment, on March 22, 1956, and further comments were received and considered.

Background of the rule. Section 240.16b-3 was first adopted on October 9, 1935. It provided, at that time, for an exemption from section 16 (b) liability for certain transactions in connection with stock option plans. Any purchase and sale or sale and purchase was exempted from the operation of section 16 (b): *Provided*, That (1) the purchase was pursuant to a nontransferable option granted prior to June 6, 1934, in connection with an employment contract, (2) the sale was made subsequent to October 9, 1935, (3) the plan was approved at a stockholders' meeting, and (4) the price of the stock under the option was at least as high as the market price of the stock at the time the option was granted.

With the passage of time this rule became obsolete and on February 25, 1949, it was withdrawn and a new rule, dealing with an entirely different subject matter, was adopted. The new rule took the form of an amendment to the old rule, but it did not deal with options at all. Instead, it specifically omitted from the scope of its exemptive provisions convertible securities, options, warrants, or other rights to purchase a security. The February 25, 1949, rule dealt with the exemption from section 16 (b) of transactions involving securities acquired under bonus, profit-sharing or similar plans. It exempted purchases made pursuant to a bonus, profit-sharing or similar plan meeting the following requirements:

- (1) The plan must have been approved by security holders
- (2) The security must have been issued for services
- (3) The recipients of the bonus must have been selected by persons not entitled to receive any bonus, and
- (4) The aggregate amount received under the bonus plan must have been limited to a percentage of net profits of the issuer or its subsidiaries.

The Internal Revenue Act of 1950 accorded favorable tax treatment to the receipt of certain non-transferable stock options (called "restricted stock options") and to the exercise of such options and the sale of stock covered thereby, if certain conditions were met.

The Commission again amended § 240.16b-3 in 1952 to exempt purchases pursuant to restricted stock option plans which met the same standards as had been provided in the rule for bonus plans. The release which accompanied the promulgation of the rule (Securities Exchange Act Release No. 4754) stated: "The amendment to § 240.16b-3 broadens the exemption hitherto provided by the rule by making it applicable to acquisitions of nontransferable options, as well as to acquisitions of shares of stock." It sought to accomplish this purpose by adding the purchase of non-transferable

options to the transactions exempted, and by amending that portion of the rule which denied the benefits of the rule to plans under which cash was paid for stock to except stock received pursuant to an option. The rule also eliminated the provision requiring the security to be received from the issuer for services.

Problems under the rule. The effort to adapt a rule dealing with stock bonus and similar plans, which excluded stock option plans, to stock option plans has led to many interpretative problems for the staff of the Commission. These problems have also been the subject of private litigation in the Courts. Interpretations by the Commission staff have received very limited publicity, and are not official determinations of the Commission.

The Commission thereafter published for comment on August 16, 1955 a proposed amended rule which in effect would codify interpretations rendered by the staff. In the course of considering the many comments received, it was concluded that the public interest would be better served by a rule which, in addition to serving as a clarification and codification of existing interpretations, would simplify the provisions and reinforce investor protection. Accordingly a revised proposal was published for comment on March 22, 1956. Further comments were received and considered and the Commission has adopted the rule substantially in the form published on March 22. The only changes from that proposal in the rule as adopted permit the required consent of security holders to be given by written consent following adequate solicitation as well as at a stockholders' meeting and clarify the use of outstanding securities as a basis for a formula limiting the amount of funds or securities which may be allocated pursuant to the plan.

Analysis of amended rule. 1. The amended rule makes it clear that the exemption applies to the acquisition of stock pursuant to non-transferable options. This is consistent with the expressed intention of the Commission which amended the rule in 1952 for the purpose of conforming it to the Revenue Act of 1950.

2. The amended rule requires that, to qualify for the exemption, the plan must be approved by the holders of at least a majority of the securities of the issuer present or represented and entitled to vote at a meeting for which proxies were solicited substantially in accordance with the Commission's proxy rules whether or not such rules were applicable to the solicitation or by written consents of a majority of such holders, solicited in accordance with such rules. This makes clear that (a) approval of the plan by holders of a majority of the securities represented at the stockholders' meeting and entitled to vote or by such written consents is necessary, and sufficient, and (b) even if the corporation was not subject to the Securities Exchange Act at the time the plan was approved it may qualify for the exemption if, in fact, the requisite number of votes were obtained following an adequate proxy solicitation.

This is in accord with administrative interpretations of the present rule.

3. The amended rule adds a new subsection authorizing successor corporations to qualify for the benefits of the rule if their predecessors would have been eligible. By administrative interpretation, the present rule has been construed to include successor corporations.

4. The amended rule eliminates the requirement that the selection of the persons who are to receive the securities pursuant to the plan must be made by a board of directors, a majority of whom are not eligible to participate in the plan, or a committee all of the members of which are not eligible to participate in the plan. This requirement raised problems of state law relating to the responsibility of officers and directors who vote upon their compensation. Drafting difficulties which would have to take into account the state statutes dealing with director responsibilities for compensation, and practical difficulties when a board of directors is composed entirely or in large part of officers of the company eligible to participate under the option plan also add to the problem of adopting any provision dealing with this matter. It is believed that these problems are matters to be resolved in state courts. In addition, there has been no demonstration that any additional investor protection has been conferred by this provision. The provision has a very limited operation since it is restricted to prohibiting directors or committee members entitled to benefit from the particular plan or similar plan from constituting a majority or all of those awarding the options. The means by which a director or committee member may benefit himself, if he so desires, are not greatly restricted.

5. The amended rule clarifies the existing language to indicate that the plan may qualify under the rule if it limits the funds or securities allocated under the plan by establishing limitations for each fiscal year, or for the duration of the plan, and the limitation may be determined by fixed amounts of securities or funds, or by formulas based upon earnings, dividends, compensation received by participants, percentages of outstanding securities, or similar factors. This has been the administrative interpretation of the present rule.

6. The amended rule eliminates the existing language dealing with the payment of cash as a factor in the availability of the exemption. Originally, this provision served to exclude stock acquired pursuant to options or similar contracts which called for the payment of cash, for the rule was then limited to bonus or similar plans. The conflicting provisions dealing with cash payments can only be reconciled by arbitrary determinations which have no place in the consideration of whether the public interest requires this provision in the rule.

Purpose of the amendment. In connection with the amendment, the Commission limited itself to the effectuation of the basic intention, as expressed in the release which amended the rule after the Revenue Act of 1950, to exempt acquisitions pursuant to both bonus and

similar plans and restricted stock option plans. A clarification of the rule seemed urgent, and in connection with the clarification it seemed desirable to simplify the operation and language of the rule to enable a clearer understanding of its effect so long as the public interest was not prejudiced.

Statutory basis. This action is taken pursuant to the Securities Exchange Act of 1934, particularly sections 3 (a) (12), 3 (b), 16 (b) and 23 (a).

Text of rule. The text of the amended rule is as follows:

§ 240.16b-3 *Exemption from section 16 (b) of certain acquisitions of securities under certain plans.* Any acquisition of non-transferable options or of shares of stock including stock acquired pursuant to such options by a director or officer of the issuer of such stock shall be exempt from the operation of section 16 (b) of the act if the stock or option was acquired pursuant to a bonus, profit-sharing, retirement, stock option, thrift, savings or similar plan meeting all the following conditions:

(a) The plan has been approved specifically, or through the approval of a charter amendment authorizing stock for issuance pursuant to the plan:

(1) By the holders of at least a majority of the securities of the issuer present or represented and entitled to vote at a meeting for which proxies were solicited substantially in accordance with such rules and regulations, if any, as were then in effect under section 14 (a) of the act, whether or not such rules and regulations were applicable to such solicitation; or by written consents of the holders of at least a majority of the securities of the issuer entitled to vote solicited substantially in accordance with such rules and regulations; or

(2) By the security holders of a predecessor corporation in the manner provided in subparagraph (1) of this paragraph, if the plan, or obligations to participate thereunder, were assumed by the issuer in connection with the transaction of succession.

(b) The plan effectively limits (subject to any provisions for adjustment of the plan or options outstanding thereunder to prevent dilution or enlargement of rights) the aggregate amount of funds or securities which may be allocated pursuant to the plan, either by limiting the maximum amount which may be allocated to each participant in the plan or by limiting the maximum amount which may be so allocated to all such participants. Such limitations may be established for each fiscal year, or for the duration of the plan, whether or not the plan has a fixed termination date, and may be determined either by fixed amounts of securities or funds, or by formulas based upon earnings of the issuer, dividends paid, compensation received by participants, outstanding securities or percentages thereof outstanding from time to time, or similar factors which will result in a determinable limitation.

(c) Unless the context otherwise requires, all terms used in this section shall have the same meanings as in the act or elsewhere in the general rules and

regulations thereunder. In addition the following definitions apply:

(1) The term "plan" in this section includes all plans whether or not set forth in any formal document;

(2) The term "non-transferable option" includes an option which by its terms is not transferable by such optionee otherwise than by will or the laws of descent and distribution, and is exercisable, during his lifetime, only by him.

Since the amendments to the rule are interpretative in nature and have the effect of relieving restriction, the amended rule shall become effective immediately upon publication.

(Sec. 23, 48 Stat. 901, as amended, 15 U. S. C. 78w. Interprets or applies sec. 3, 16, 48 Stat. 882, 896; 15 U. S. C. 78c, 78p)

By the Commission.

[SEAL] ORVAL L. DuBOIS,
Secretary.

MAY 18, 1956.

[F. R. Doc. 56-4200; Filed, May 28, 1956; 8:47 a.m.]

TITLE 26—INTERNAL REVENUE

Chapter I—Internal Revenue Service, Department of the Treasury

Subchapter D—Employment Taxes

[T. D. 6176]

[Regs. 128]

PART 408—EMPLOYEE TAX AND EMPLOYER TAX UNDER THE FEDERAL INSURANCE CONTRIBUTIONS ACT; APPLICABLE ON AND AFTER JANUARY 1, 1951

SERVICES FOR CERTAIN TAX EXEMPT ORGANIZATIONS

On March 14, 1956, notice of proposed rule making regarding amendments to conform Regulations 128 (26 CFR (1939) Part 408), as amended, relating to the employee tax and the employer tax under the Federal Insurance Contributions Act (subchapter A, chapter 9, Internal Revenue Code of 1939), to the provisions of section 403 of the Social Security Amendments of 1954 (68 Stat. 1098), approved September 1, 1954, was published in the FEDERAL REGISTER (21 F. R. 1593). No objection to the rules proposed having been received during the 30-day period prescribed in the notice, the following amendments to such regulations are hereby adopted:

PARAGRAPH 1. Section 408.201 is amended by inserting after paragraph (q) the following new paragraph (r):

(r) "Social Security Amendments of 1954" means the act approved September 1, 1954 (68 Stat. 1052).

PAR. 2. There is inserted immediately preceding § 408.216 the following:

SECTION 403 OF THE SOCIAL SECURITY AMENDMENTS OF 1954, APPROVED SEPTEMBER 1, 1954

SERVICE FOR CERTAIN TAX-EXEMPT ORGANIZATIONS PRIOR TO ENACTMENT OF THIS ACT

(a) In any case in which—

(1) An individual has been employed, at any time subsequent to 1950 and prior to the enactment of this act, by an organization which is exempt from income tax under section 101 (6) of the Internal Revenue Code

of 1939 but which has failed to file prior to the enactment of this act a waiver certificate under section 1426 (1) of the Internal Revenue Code of 1939:

(2) The service performed by such individual as an employee of such organization during the period subsequent to 1950 and prior to 1955 would have constituted employment (as defined in section 210 of the Social Security Act and section 1426 (b) of the Internal Revenue Code of 1939) if such organization had filed prior to the performance of such service such a certificate accompanied by a list of the signatures of employees who concurred in the filing of such certificate and such individual's signature had appeared on such list;

(3) The taxes imposed by sections 1400 and 1410 of the Internal Revenue Code of 1939 have been paid with respect to any part of the remuneration paid to such individual by such organization for such service;

(4) Part of such taxes have been paid prior to the enactment of this Act;

(5) So much of such taxes as have been paid prior to the enactment of this Act have been paid by such organization in good faith and upon the assumption that a waiver certificate had been filed by it under section 1426 (1) of the Internal Revenue Code of 1939; and

(6) No refund of such taxes has been obtained,

the amount of such remuneration with respect to which such taxes have been paid shall, upon the request of such individual (filed in such form and manner, and with such official, as may be prescribed by regulations made under subchapter A of Chapter 9 of the Internal Revenue Code of 1939), be deemed to constitute remuneration for employment as defined in section 210 of the Social Security Act and section 1426 (b) of the Internal Revenue Code of 1939.

(b) In any case in which—

(1) An individual has been employed, at any time subsequent to 1950 and prior to the enactment of this Act, by an organization which has filed a waiver certificate under section 1426 (1) of the Internal Revenue Code of 1939;

(2) The service performed by such individual during the time he was so employed would have constituted employment (as defined in section 210 of the Social Security Act and section 1426 (b) of the Internal Revenue Code of 1939) if such individual's signature had appeared on the list of signatures of employees who concurred in the filing of such certificate;

(3) The taxes imposed by sections 1400 and 1410 of the Internal Revenue Code of 1939 have been paid prior to the enactment of this Act with respect to any part of the remuneration paid to such individual by such organization for such service; and

(4) No refund of such taxes has been obtained,

the amount of such remuneration with respect to which such taxes have been paid shall, upon the request of such individual (filed on or before January 1, 1957, and in such form and manner, and with such official, as may be prescribed by regulations made under subchapter A of chapter 9 of the Internal Revenue Code of 1939), be deemed to constitute remuneration for employment as defined in section 210 of the Social Security Act and section 1426 (b) of the Internal Revenue Code of 1939, and such individual shall be deemed to have concurred in the filing of the waiver certificate filed by such organization under section 1426 (1) of the Internal Revenue Code of 1939.

PAR. 3. Section 408.216 is amended as follows:

(A) By revising § 408.216 (a) (1) to read as follows:

(1) Services performed by an employee in the employ of a religious, charitable, educational, or other organization exempt from income tax under section 101 (6) of the Internal Revenue Code are excepted from employment. However, this exception does not apply to services (i) performed during the period for which a certificate, filed pursuant to section 1426 (1) of the act, is in effect if such services are performed by an employee (a) whose signature appears, or is deemed pursuant to section 403 (b) of the Social Security Amendments of 1954 and paragraph (d) of this section to appear, on the list filed by such organization under section 1426 (1) of the act, or (b) who became an employee of such organization after the calendar quarter in which the certificate was filed; or (ii) with respect to which the employee and employer taxes have been paid and a request is thereafter filed under the conditions stated in paragraph (c) (1) and (2) of this section.

(B) By revising the first and second sentences of § 408.216 (b) (2) (v) to read as follows:

(v) Services performed in the employ of an organization which has duly filed a certificate are not excepted from employment under section 1426 (b) (9). (B) of the act, during the period for which the certificate is in effect, if such services are performed by an employee (a) whose signature appears, or is deemed pursuant to section 403 (b) of the Social Security Amendments of 1954 and paragraph (d) of this section to appear, on the list filed by the organization on Form SS-15a, or on Form SS-15a Supplement, or (b) who becomes an employee of the organization after the calendar quarter in which the certificate is filed. Consequently, the taxes imposed under the Act will apply to the organization and to each employee whose services constitute employment and whose signature appears, or is deemed pursuant to section 403 (b) of the Social Security Amendments of 1954 and paragraph (d) of this section to appear, on the accompanying list or on any supplemental list or lists filed within the prescribed time, commencing with the first day following the close of the calendar quarter in which the certificate is filed. . . .

(C) By adding at the end of § 408.216 the following new paragraphs (c) and (d):

(c) *Special procedure for coverage of certain services in cases where waiver was not filed prior to September 1, 1954—*

(1) *In general.* Pursuant to section 403 (a) of the Social Security Amendments of 1954, any individual who, as an employee, performed services after December 31, 1950, and prior to September 1, 1954, for an organization exempt from income tax under section 101 (6) of the Internal Revenue Code which had failed to file, prior to September 1, 1954, a valid certificate under section 1426 (1) of the act, may request that the remuneration received by him for services performed in the employ of the organization after 1950 and before 1955 be deemed to constitute remuneration for employment

for purposes of the taxes imposed under the act and for purposes of title II of the Social Security Act, if:

(i) Any of the services performed by the individual after December 31, 1950, and prior to January 1, 1955, would have constituted employment, as defined in section 1426 (b) of the act, if a certificate on Form SS-15 filed by the organization under section 1426 (1) of the act had been in effect for the period during which the services were performed and the individual's signature had appeared on the accompanying list on Form SS-15a;

(ii) The employee and employer taxes have been paid with respect to any part of the remuneration received by the individual from the organization for such services;

(iii) A part of such taxes was paid prior to September 1, 1954;

(iv) Such taxes as were paid before September 1, 1954, were paid by the organization in good faith and upon the assumption that it had filed a valid certificate under section 1426 (1) of the act; and

(v) No refund (or credit) of such taxes has been obtained either by the employee or the employer, exclusive of any refund (or credit) which would be allowable if the services performed by the individual had constituted employment.

The provisions of section 403 (a) of the Social Security Amendments of 1954 have no application to remuneration for services performed after 1954.

(2) *Execution and filing of request.*

(i) Except where the alternative procedure set forth in subdivision (ii) of this subparagraph is followed, the request of an individual under section 403 (a) of the Social Security Amendments of 1954 shall be made and filed as provided in this subdivision. The request shall be in writing, shall be signed and dated by the individual, and shall include:

(a) The name and address of the organization for which the services were performed;

(b) The name, address, and social security account number of the individual;

(c) A statement that the individual has not obtained refund or credit (other than a refund or credit which would be allowable if the services had constituted employment) from the district director of any part of the employee tax paid with respect to remuneration received by him from the organization for services performed after 1950 and before 1955; and

(d) A request that all remuneration received by him from the organization for such services with respect to which employee and employer taxes have been paid shall be deemed to constitute remuneration for employment to the extent authorized by section 403 (a) of the Social Security Amendments of 1954. The request of an individual shall be accompanied by a statement of the organization incorporating the substance of each of the five conditions listed in subparagraph (1) of this paragraph. The statement of the organization should also show that the individual performed services for the organization after December 31, 1950, and prior to September

1, 1954; that the organization was exempt from income tax under section 101 (6) of the Internal Revenue Code and failed to file, prior to September 1, 1954, a valid certificate under section 1426 (1) of the act; and the district director with whom returns on Form 941 are filed. Such statement must be signed by the president or other principal officer of the organization who shall certify that the statement is correct to the best of his knowledge and belief. If the statement of the organization is not submitted with the individual's request, the individual shall include in his request an explanation of his inability to submit such statement. Other information may be required, but should be submitted only upon receipt of a specific request therefor. No particular form is prescribed for the request of the individual or the statement of the organization required to be submitted with the request. The individual's request should be filed with the district director with whom the organization files returns on Form 941. If the individual is deceased or mentally incompetent and the request filed pursuant to section 403 (a) of the Social Security Amendments of 1954 is made by the legal representative of the individual or other person authorized to act on his behalf, the request must be accompanied by evidence showing such person's authority to make the request.

(ii) An organization which has or had in its employ individuals with respect to whom section 403 (a) of the Social Security Amendments of 1954 is applicable may, if it so desires, prepare a form or forms for use by any such individual or individuals in making requests under such section. Any such form shall provide space for the signature of the individual or individuals and shall contain such information as is required by subdivision (i) of this subparagraph to be included in a request. Any such form used by more than one individual, and any such form used by one individual which is signed and returned to the organization, shall be submitted by the organization, together with its statement (as required in subdivision (i) of this subparagraph), to the district director with whom the organization files returns on Form 941. An individual is not required to use a form prepared by the organization but may, at his election, file his request in accordance with the provisions of subdivision (i) of this subparagraph.

(3) *Optional tax payments by organization.* An organization which, prior to September 1, 1954, has reported and paid taxes under the act with respect to any portion of the remuneration paid to an individual, who is eligible to file a request under section 403 (a) of the Social Security Amendments of 1954, for services performed by him subsequent to 1950 and prior to 1955, may report and pay taxes under the act on or after September 1, 1954, with respect to any remaining portion of such remuneration which would have constituted wages if a certificate had been in effect with respect to such services. Such taxes may be reported as an adjustment without interest in the manner prescribed in Subpart G of the regulations in this part.

The statement in explanation of such adjustment should include a reference to section 403 (a) of the Social Security Amendments of 1954.

(4) *Effect of request.* If a request is made and filed under the conditions stated in subparagraphs (1) and (2) of this paragraph with respect to one or more individuals, remuneration for services performed by each such individual subsequent to 1950 and prior to 1955, with respect to which the employee and employer taxes are paid on or before the date on which the request is filed with the district director, will be deemed to constitute remuneration for employment to the extent that such services would have constituted employment as defined in section 1426 (b) of the act if a certificate had been in effect with respect to such services. However, the provisions of section 1426 (a) of the act and §§ 408.226 and 408.227 are applicable in determining the extent to which such remuneration for employment constitutes wages for purposes of the employee and employer taxes.

(d) *Special procedure for coverage of certain services in cases where individual failed to sign list of concurring employees—(1) In general.* Pursuant to section 403 (b) of the Social Security Amendments of 1954, any individual who, as an employee, performed services after December 31, 1950, and prior to September 1, 1954, for an organization which filed a valid certificate under section 1426 (1) of the act, but who failed to sign the list of employees concurring in the filing of such certificate, may request that the remuneration received by him for such services be deemed to constitute remuneration for employment for purposes of the taxes imposed under the act and for purposes of title II of the Social Security Act, if:

(i) Any of the services performed by the individual after December 31, 1950, and prior to September 1, 1954, would have constituted employment, as defined in section 1426 (b) of the act, if his signature had appeared on the list of employees who concurred in the filing of the certificate;

(ii) The employee and employer taxes were paid prior to September 1, 1954, with respect to any part of the remuneration received by the individual from the organization for such services; and

(iii) No refund (or credit) of such taxes has been obtained either by the employee or the employer, exclusive of any refund (or credit) which would be allowable if the services performed by the individual had constituted employment.

(2) *Effect of request.* An individual who makes and files a request under the conditions stated in subparagraphs (1) and (3) of this paragraph with respect to services performed as an employee of an organization exempt from income tax under section 101 (6) of the Internal Revenue Code will be deemed to have signed the list accompanying the certificate filed by the organization under section 1426 (1) of the act. Accordingly, all services performed by the individual for the organization on and after the effective date of the certificate will constitute employment to the same extent

as if he had, in fact, signed the list. The employee tax and employer tax are applicable with respect to any remuneration paid to the employee by the organization which constitutes wages. If less than the correct amount of such taxes has been paid, the additional amount due should be reported as an adjustment without interest within the time specified in Subpart G of the regulations in this part. The statement in explanation of such adjustment should include a reference to section 403 (b) of the Social Security Amendments of 1954.

(3) *Execution and filing of request.* (i) Except where the alternative procedure set forth in subdivision (ii) of this subparagraph is followed, the request of an individual under section 403 (b) of the Social Security Amendments of 1954 shall be made and filed as provided in this subdivision. The request shall be filed on or before January 1, 1957, shall be in writing, shall be signed and dated by the individual, and shall include:

(a) The name and address of the organization for which the services were performed;

(b) The name, address, and social security account number of the individual;

(c) A statement that the individual has not obtained a refund or credit (other than a refund or credit which would be allowable if the services had constituted employment) from the district director of any part of the employee tax paid before September 1, 1954, with respect to remuneration received by him from the organization;

(d) A request that all remuneration received by the individual from the organization for services performed after 1950 and before September 1, 1954, with respect to which employee and employer taxes were paid before September 1, 1954, shall be deemed to constitute remuneration for employment to the extent authorized by section 403 (b) of the Social Security Amendments of 1954; and

(e) A statement that the individual understands that, upon the filing of such request with the district director, (1) he will be deemed to have concurred in the certificate which was previously filed by the organization, and (2) the employee and employer taxes will be applicable to all wages received, and to be received, by him for services performed for the organization on or after the effective date of such certificate to the extent that such taxes would have been applicable if he had signed the list on Form SS-15a submitted with the certificate.

The request of an individual shall be accompanied by a statement of the organization incorporating the substance of each of the three conditions listed in subparagraph (1) of this paragraph. The statement of the organization should also show that the individual performed services for the organization after December 31, 1950, and prior to September 1, 1954; that the organization filed a valid certificate under section 1426 (1) of the act; and the district director with whom returns on Form 941 are filed. Such statement must be signed by the president or other principal officer of the organization who shall certify that the

statement is correct to the best of his knowledge and belief. If the statement of the organization is not submitted with the individual's request, the individual shall include in his request an explanation of his inability to submit such statement. Other information may be required, but should be submitted only upon receipt of a specific request therefor. No particular form is prescribed for the request of the individual or the statement of the organization required to be submitted with the request. The individual's request should be filed with the district director with whom the organization files returns on Form 941. If the individual is deceased or mentally incompetent and the request filed pursuant to section 403 (b) of the Social Security Amendments of 1954 is made by the legal representative of the individual or other person authorized to act on his behalf, the request must be accompanied by evidence showing such person's authority to make the request.

(ii) An organization which has or had in its employ individuals with respect to whom section 403 (b) of the Social Security Amendments of 1954 is applicable, may, if it so desires, prepare a form or forms for use by any such individual or individuals in making requests under such section. Any such form shall provide space for the signature of the individual or individuals and shall contain such information as is required by subdivision (i) of this subparagraph to be included in a request. Any such form used by more than one individual, and any such form used by one individual which is signed and returned to the organization, shall be submitted by the organization, together with its statement (as required in subdivision (i) of this subparagraph), to the district director with whom the organization files returns on Form 941. An individual is not re-

quired to use a form prepared by the organization but may, at his election, file his request in accordance with the provisions of subdivision (i) of this subparagraph.

(Sec. 403, 68 Stat. 1098, 53 Stat. 178, 467; 26 U. S. C. 1426, App. note, 1429, 3791)

[SEAL] RUSSELL C. HARRINGTON,
Commissioner of Internal Revenue.

Approved: May 24, 1956.

DAN THROOP SMITH,
Special Assistant to the Secretary
in Charge of Tax Policy.

[F. R. Doc. 56-4197; Filed, May 28, 1956;
8:46 a. m.]

TITLE 49—TRANSPORTATION

Chapter I—Interstate Commerce Commission

[Rev. S. O. 562, Amdt. 8]

PART 97—ROUTING OF TRAFFIC

REROUTING OF TRAFFIC, APPOINTMENT OF AGENT

At a session of the Interstate Commerce Commission, Division 3, held at its office in Washington, D. C., on the 23d day of May A. D. 1956.

Upon further consideration of the provisions of Revised Service Order No. 562 (14 F. R. 2697), as amended (15 F. R. 3105; 8651; 16 F. R. 4551; 17 F. R. 4675; 18 F. R. 3048; 19 F. R. 2966; 20 F. R. 3685), and good cause appearing therefor:

It is ordered, That: § 97.562 *Rerouting of traffic; appointment of agent*, of Revised Service Order No. 562 be, and it is hereby, further amended by substituting the following paragraphs (a) and (d) hereof for paragraphs (a) and (d) thereof:

(a) Charles W. Taylor, Director, Bureau of Safety and Service, Interstate Commerce Commission, Washington 25, D. C., is hereby designated and appointed an Agent of the Interstate Commerce Commission and vested with authority to authorize diversion and rerouting of loaded and empty freight cars from and to any point in the United States whenever in his opinion an emergency exists whereby any railroad is unable to move traffic currently over its lines.

(d) Expiration date: This order shall expire at 11:59 p. m., May 25, 1957, unless otherwise modified, changed, suspended, or annulled by order of this Commission.

It is further ordered, That this amendment shall become effective at 11:59 p. m., May 25, 1956; that a copy of this order and direction be served upon the state railroad regulatory bodies of each State, upon all common carriers by railroad subject to the Interstate Commerce Act, and upon the Association of American Railroads, Car Service Division, as agent of the railroads subscribing to the car service and per diem agreement under the terms of that agreement; and that notice of this order be given to the general public by depositing a copy in the office of the Secretary of the Commission at Washington, D. C., and by filing it with the Director, Division of the Federal Register.

(Sec. 12, 24 Stat. 383, as amended; 49 U. S. C. 12. Interprets or applies sec. 1, 24 Stat. 379, as amended, sec. 15, 24 Stat. 384, as amended; 49 U. S. C. 1)

By the Commission, Division 3.

[SEAL] HAROLD D. MCCOY,
Secretary.

[F. R. Doc. 56-4195; Filed, May 28, 1956;
8:46 a. m.]

PROPOSED RULE MAKING

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[26 CFR (1954) Part 1]

INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

COMMON NONTAXABLE EXCHANGES

Notice is hereby given, pursuant to the Administrative Procedure Act, approved June 11, 1946, that the regulations set forth in tentative form below are proposed to be prescribed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury or his delegate. Prior to the final adoption of such regulations, consideration will be given to any data, views, or arguments pertaining thereto which are submitted in writing, in duplicate, to the Commissioner of Internal Revenue, Attention: T:P, Washington 25, D. C., within the period of 30 days from the date of publication of this notice in

the FEDERAL REGISTER. The proposed regulations are to be issued under the authority contained in section 7805 of the Internal Revenue Code of 1954 (68A Stat. 917; 26 U. S. C. 7805).

[SEAL] RUSSELL C. HARRINGTON,
Commissioner of Internal Revenue.

The following regulations for taxable years beginning after December 31, 1953, and ending after August 16, 1954, except where otherwise specifically provided, are hereby prescribed under sections 1031 (exchange of property held for productive use or investment), 1032 (exchange of stock for property), and 1036 (stock for stock of same corporation) of the Internal Revenue Code of 1954:

COMMON NONTAXABLE EXCHANGES

Sec. 1.1031 (a) Statutory provisions; exchange of property held for productive use or investment; non-recognition of gain or loss from exchanges solely in kind.

Sec. 1.1031 (a)-1 Property held for productive use in trade or business or for investment.
1.1031 (b) Statutory provisions; exchange of property held for productive use or investment; gain from exchanges not solely in kind.
1.1031 (b)-1 Receipt of other property or money in tax-free exchange.
1.1031 (c) Statutory provisions; exchange of property held for productive use or investment; loss from exchanges not solely in kind.
1.1031 (c)-1 Nonrecognition of loss.
1.1031 (d) Statutory provisions; exchange of property held for productive use or investment; basis.
1.1031 (d)-1 Property acquired upon a tax-free exchange.
1.1031 (d)-2 Treatment of assumption of liabilities.
1.1032 Statutory provisions; exchange of stock for property.
1.1032-1 Disposition by a corporation of its own capital stock.

Sec.
1.1036 Statutory provisions; stock for
stock of same corporation.
1.1036-1 Stock for stock of the same
corporation.

§ 1.1031 (a) *Statutory provisions; exchange of property held for productive use or investment; nonrecognition of gain or loss from exchanges solely in kind.*

Sec. 1031. Exchange of property held for productive use or investment.—(a) Nonrecognition of gain or loss from exchanges solely in kind. No gain or loss shall be recognized if property held for productive use in trade or business or for investment (not including stock in trade or other property held primarily for sale, nor stocks, bonds, notes, choses in action, certificates of trust or beneficial interest, or other securities or evidences of indebtedness or interest) is exchanged solely for property of a like kind to be held either for productive use in trade or business or for investment.

§ 1.1031 (a)-1 *Property held for productive use in trade or business or for investment.* (a) Section 1031 (a) provides an exception from the general rule requiring the recognition of gain or loss upon the sale or exchange of property. See section 1002 and the regulations thereunder. Under section 1031 (a), no gain or loss is recognized if property held for productive use in trade or business or for investment is exchanged solely for property of a like kind to be held either for productive use in trade or business or for investment. Under section 1031 (a), property held for productive use in trade or business may be exchanged for property held for investment. Similarly, property held for investment may be exchanged for property held for productive use in trade or business. However, section 1031 (a) provides that property held for productive use in trade or business or for investment does not include stock in trade or other property held primarily for sale, nor stocks, bonds, notes, choses in action, certificates of trust or beneficial interest, or other securities or evidences of indebtedness or interest. A transfer is not within the provisions of section 1031 (a) if as part of the consideration the taxpayer receives money or property which does not meet the requirements of section 1031 (a), but such transfer, if otherwise qualified, will be within the provisions of section 1031 (b). Similarly, a transfer is not within the provisions of section 1031 (a) if as part of the consideration the other party to the exchange assumes a liability of the taxpayer, but such transfer, if otherwise qualified, will be within the provisions of section 1031 (b). (See § 1.1002-2 relating to assumption of liabilities.) A transfer of property meeting the requirements of section 1031 (a) may be within the provisions of section 1031 (a) even though the taxpayer transfers in addition property not meeting the requirements of section 1031 (a) or money. However, the nonrecognition treatment provided by section 1031 (a) does not apply to the property transferred which does not meet the requirements of section 1031 (a).

(b) As used in section 1031 (a), the words "like kind" have reference to the nature or character of the property and

not to its grade or quality. One kind or class of property may not, under such section, be exchanged for property of a different kind or class. The fact that any real estate involved is improved or unimproved is not material, for such fact relates only to the grade or quality of the property and not to its kind or class. Unproductive real estate held by one other than a dealer for future use or future realization of the increment in value is held for investment and not primarily for sale.

(c) No gain or loss is recognized if (1) a taxpayer exchanges property held for productive use in his trade or business, together with cash, for other property of like kind for the same use, such as a truck for a new truck or a passenger automobile for a new passenger automobile to be used for a like purpose, or (2) a taxpayer who is not a dealer in real estate exchanges city real estate for a ranch or farm, or exchanges a leasehold of a fee with 30 years or more to run for real estate, or exchanges improved real estate for unimproved real estate, or (3) a taxpayer exchanges investment property and cash for investment property of a like kind.

(d) Gain or loss is recognized if, for instance, a taxpayer exchanges (1) Treasury bonds maturing March 15, 1958, for Treasury bonds maturing December 15, 1968, or (2) a real estate mortgage for consolidated farm loan bonds.

§ 1.1031 (b) *Statutory provisions; exchange of property held for productive use or investment; gain from exchanges not solely in kind.*

Sec. 1031. Exchange of property held for productive use or investment. * * *

(b) Gain from exchanges not solely in kind. If any exchange would be within the provisions of subsection (a), of section 1035 (a), or of section 1036 (a), if it were not for the fact that the property received in exchange consists not only of property permitted by such provisions to be received without the recognition of gain, but also of other property or money, then the gain, if any, to the recipient shall be recognized, but in an amount not in excess of the sum of such money and the fair market value of such other property.

§ 1.1031 (b)-1 *Receipt of other property or money in tax-free exchange.* (a) If there is received by the taxpayer other property (in addition to property permitted to be received without recognition of gain) or money (1) in an exchange described in section 1031 (a) of property held for investment or productive use in trade or business for property of like kind to be held either for productive use or for investment, or (2) in an exchange described in section 1035 (a) of insurance policies or annuity contracts, or (3) in an exchange described in section 1036 (a) of common stock for common stock, or preferred stock for preferred stock, in the same corporation and not in connection with a corporate reorganization, then—

(i) The gain, if any, to the taxpayer will be recognized in an amount not in excess of the sum of the money and the fair market value of the other property, but

(ii) The loss, if any, to the taxpayer from such an exchange is not to be recognized to any extent (see section 1031 (c)).

(b) The application of this section may be illustrated by the following example:

Example. A, who is not a dealer in real estate, in 1954 exchanges real estate, which he purchased (for investment) in 1940 for \$5,000, for other real estate (to be held for productive use in trade or business) which has a fair market value of \$6,000, and \$2,000 in cash. The gain from the transaction is \$3,000, but is recognized only to the extent of the cash received of \$2,000.

(c) Consideration received in the form of an assumption of liabilities (or a transfer subject to a liability) is to be treated as "other property or money" for the purposes of section 1031 (b).

§ 1.1031 (c) *Statutory provisions; exchange of property held for productive use or investment; loss from exchanges not solely in kind.*

Sec. 1031. Exchange of property held for productive use or investment. * * *

(c) Loss from exchanges not solely in kind. If an exchange would be within the provisions of subsection (a), of section 1035 (a), or of section 1036 (a), if it were not for the fact that the property received in exchange consists not only of property permitted by such provisions to be received without the recognition of gain or loss, but also of other property or money, then no loss from the exchange shall be recognized.

§ 1.1031 (c)-1 *Nonrecognition of loss.* Section 1031 (c) provides that a loss shall not be recognized from an exchange of property described in sections 1031 (a), 1035 (a), or 1036 (a) where there is received in the exchange other property or money in addition to property permitted to be received without recognition of gain or loss.

§ 1.1031 (d) *Statutory provisions; exchange of property held for productive use or investment; basis.*

Sec. 1031. Exchange of property held for productive use or investment. * * *

(d) Basis. If property was acquired on an exchange described in this section, section 1035 (a), or section 1036 (a), then the basis shall be the same as that of the property exchanged decreased in the amount of any money received by the taxpayer and increased in the amount of gain to the taxpayer that was recognized on such exchange. If the property so acquired consisted in part of the type of property permitted by this section, section 1035 (a), or section 1036 (a), to be received without the recognition of gain or loss, and in part of other property, the basis provided in this paragraph shall be allocated between the properties (other than money) received, and for the purpose of the allocation there shall be assigned to such other property an amount equivalent to its fair market value at the date of the exchange. For purposes of this section, section 1035 (a), and section 1036 (a), where as part of the consideration to the taxpayer another party to the exchange assumed a liability of the taxpayer or acquired from the taxpayer property subject to a liability, such assumption or acquisition (in the amount of the liability) shall be considered as money received by the taxpayer on the exchange.

§ 1.1031 (d)-1 *Property acquired upon a tax-free exchange.* (a) In the case of an exchange of property solely of the type described in section 1031, section

1035 (a), or section 1036 (a), if no part of the gain or loss was recognized under the law applicable to the year in which the exchange was made, the basis of the property acquired is the same as the basis of the property transferred by the taxpayer with proper adjustments to the date of the exchange.

(b) If, in an exchange of properties of the type indicated in section 1031, section 1035 (a), or section 1036 (a), gain to the taxpayer was recognized under the provisions of section 1031 (b) or a similar provision of a prior revenue law, on account of the receipt of money in the transaction, the basis of the property acquired is the basis of the property transferred (adjusted to the date of the exchange), decreased by the amount of money received and increased by the amount of gain recognized on the exchange. The application of this paragraph may be illustrated by the following example:

Example. A, an individual in the moving and storage business, in 1954 transfers one of his moving trucks with an adjusted basis in his hands of \$2,500 to B in exchange for a truck (to be used in A's business) with a fair market value of \$2,400 and \$200 in cash. A realizes a gain of \$100 upon the exchange, all of which is recognized under section 1031 (b). The basis of the truck acquired by A is determined as follows:

Adjusted basis of A's former truck.....	\$2,500
Less: Amount of money received.....	200
Difference.....	2,300
Plus: Amount of gain recognized.....	100
Basis of truck acquired by A.....	2,400

(c) If, upon an exchange of properties of the type described in section 1031, section 1035 (a), or section 1036 (a), there was received by the taxpayer other property (not permitted to be received without the recognition of gain) and gain from the transaction was recognized as required under section 1031 (b), or a similar provision of a prior revenue law, the basis (adjusted to the date of the exchange) of the property transferred by the taxpayer, decreased by the amount of any money received and increased by the amount of gain recognized, must be allocated to and is the basis of the properties (other than money) received on the exchange. For the purpose of the allocation of the basis to the properties received, there must be assigned to such other property an amount equivalent to its fair market value at the date of the exchange. The application of this paragraph may be illustrated by the following example:

Example. A, who is not a dealer in real estate, in 1954 transfers real estate which he purchased (for investment) in 1940 for \$10,000 in exchange for other real estate (to be held for investment) which has a fair market value of \$9,000, an automobile which has a fair market value of \$2,000 and \$1,500 in cash. A realizes a gain of \$2,500, all of which is recognized under section 1031 (b). The basis of the property received in exchange is the basis of the real estate A transfers (\$10,000) decreased by the amount of money received (\$1,500) and increased in the amount of gain that was recognized (\$2,500), which results in a basis for the property received of \$11,000. This basis of \$11,000 is allocated between the automobile and the

real estate received by A, the basis of the automobile being its fair market value at the date of the exchange, \$2,000, and the basis of the real estate received being the remainder, \$9,000.

(d) Section 1031 (c) and, with respect to section 1031 and section 1036 (a), similar provisions of prior revenue laws provide that no loss may be recognized on an exchange of properties of a type described in section 1031, section 1035 (a), or section 1036 (a), although the taxpayer receives other property or money from the transaction. However, the basis of the property or properties (other than money) received by the taxpayer is the basis (adjusted to the date of the exchange) of the property transferred, decreased by the amount of money received. This basis must be allocated to the properties received, and for this purpose there must be allocated to such other property an amount of such basis equivalent to its fair market value at the date of the exchange.

§ 1.1031 (d)-2 *Treatment of assumption of liabilities.* For the purposes of section 1031, section 1035 (a), and section 1036 (a), the amount of any liabilities of the taxpayer assumed by the other party to the exchange (or of any liabilities to which the exchange is subject) is to be treated as money received by the taxpayer upon the exchange, whether or not the assumption resulted in a recognition of gain or loss to the taxpayer under the law applicable to the year in which the exchange was made. See § 1.1002-2 relating to assumption of liabilities. The application of this section may be illustrated by the following example:

Example. B, an individual, owns an apartment house which has an adjusted basis in his hands of \$500,000, but which is subject to a mortgage of \$150,000. On September 1, 1954, he transfers such apartment house to C, receiving in exchange therefor \$50,000 in cash and another apartment house with a fair market value on that date of \$600,000. The transfer to C is made subject to the \$150,000 mortgage. B realizes a gain of \$300,000 on the exchange, computed as follows:

Value of property received.....	\$600,000
Cash.....	50,000
Liabilities subject to which old property was transferred.....	150,000
Total consideration received.....	800,000
Less: Adjusted basis of property transferred.....	500,000
Gain realized.....	300,000

Under section 1031 (b), \$200,000 of the \$300,000 gain is recognized. The basis of the apartment house acquired by B upon the exchange is \$500,000, computed as follows:

Adjusted basis of property transferred.....	\$500,000
Less: Amount of money received:	
Cash.....	\$50,000
Amount of liabilities subject to which property was transferred.....	150,000
	200,000
Difference.....	300,000
Plus: Amount of gain recognized upon the exchange.....	200,000
Basis of property acquired upon the exchange.....	500,000

§ 1.1032 *Statutory provisions; exchange of stock for property.*

Sec. 1032. *Exchange of stock for property.*—(a) *Nonrecognition of gain or loss.* No gain or loss shall be recognized to a corporation on the receipt of money or other property in exchange for stock (including treasury stock) of such corporation.

(b) *Basis.* For basis of property acquired by a corporation in certain exchanges for its stock, see section 362.

§ 1.1032-1 *Disposition by a corporation of its own capital stock.* (a) The disposition by a corporation of shares of its own stock (including treasury stock) for money or other property does not give rise to taxable gain or deductible loss to the corporation regardless of the nature of the transaction or the facts and circumstances involved. For example, the receipt by a corporation of the subscription price of shares of its stock upon their original issuance gives rise to neither taxable gain nor deductible loss, whether the subscription or issue price be equal to, in excess of, or less than, the par or stated value of such stock. Also, the exchange or sale by a corporation of its own shares for money or other property does not result in taxable gain or deductible loss, even though the corporation deals in such shares as it might in the shares of another corporation.

(b) Section 1032 (a) does not apply to the extent that a corporation transfers shares of its own stock (including treasury stock) as compensation for services rendered or to be rendered. Whether such transfers give rise to taxable gain or deductible loss to a corporation depends upon the real nature of the transaction, which is to be ascertained from all its facts and circumstances. If such transfer is made by the original issuance by a corporation of shares of its stock there is no taxable gain or deductible loss. If such transfer does not involve the original issuance by a corporation of shares of its stock there is no taxable gain or deductible loss if the corporation is not dealing in its own shares as it might in the shares of another corporation; however, if the corporation is dealing in its own shares as it might in the shares of another corporation, the resulting gain or loss is to be computed in the same manner as though the corporation were dealing in the shares of another.

(c) Section 1032 (a) does not apply where a corporation receives its own stock unless the receipt of such stock is in exchange for stock (including treasury stock) of the corporation. See § 1.311-1 (e) relating to treatment of acquisitions of a corporation's own stock. Similarly, section 1032 (a) does not relate to the tax treatment of the recipient of a corporation's stock. Accordingly, if a corporation receives its own stock in exchange for its stock (including treasury stock) the transaction may qualify not only under section 1032 (a), but also under section 368 (a) (1) (E) (recapitalization) or section 305 (a) (distribution of stock and stock rights).

(d) For basis of property acquired by a corporation in certain exchanges for its stock, see section 362.

§ 1.1036 Statutory provisions; stock for stock of same corporation.

Sec. 1036. *Stock for stock of same corporation.*—(a) *General rule.* No gain or loss shall be recognized if common stock in a corporation is exchanged solely for common stock in the same corporation, or if preferred stock in a corporation is exchanged solely for preferred stock in the same corporation.

(b) *Cross references.* (1) For rules relating to recognition of gain or loss where an exchange is not solely in kind, see subsections (b) and (c) of section 1031.

(2) For rules relating to the basis of property acquired in an exchange described in subsection (a), see subsection (d) of section 1031.

§ 1.1036-1 *Stock for stock of the same corporation.* (a) Section 1036 permits the exchange, without the recognition of gain or loss, of common stock for common stock, or of preferred stock for preferred stock, in the same corporation. It is not limited to an exchange between two individual stockholders; it includes a transaction between a stockholder and the corporation. However, a transaction between a stockholder and the corporation may qualify not only under section 1036 (a), but also under section 368 (a) (1) (B) (recapitalization) or section 305 (a) (distribution of stock and stock rights). The provisions of section 1036 (a) do not apply if stock is exchanged for bonds, or preferred stock is exchanged for common stock, or common stock is exchanged for preferred stock, or common stock in one corporation is exchanged for common stock in another corporation. See § 1.301-1 (1) for certain transactions treated as distributions under section 301. See § 1.368-2 (e) for certain transactions treated as distributions under section 305 (b) (1).

(b) For rules relating to recognition of gain or loss where an exchange is not wholly in kind, see subsections (b) and (c) of section 1031. For rules relating to the basis of property acquired in an exchange described in paragraph (a) of this section, see subsection (d) of section 1031.

(c) A transfer is not within the provisions of section 1036 (a) if as part of the consideration the other party to the exchange assumes a liability of the taxpayer (or if the property transferred is subject to a liability), but the transfer, if otherwise qualified, will be within the provisions of section 1031 (b).

[F. R. Doc. 56-4198; Filed, May 28, 1956; 8:47 a. m.]

DEPARTMENT OF AGRICULTURE**Agricultural Marketing Service****[7 CFR Part 989]****HANDLING OF RAISINS PRODUCED FROM RAISIN VARIETY GRAPES GROWN IN CALIFORNIA****NOTICE OF FURTHER MODIFICATION OF MINIMUM GRADE AND CONDITION STANDARDS FOR NATURAL CONDITION RAISINS**

Notice is hereby given that the Secretary of Agriculture is considering a pro-

posed rule to modify further the minimum grade and condition standards for natural condition raisins, as hereinafter set forth. The further modification of such minimum grade and condition standards is proposed after consideration of the recommendation submitted by the Raisin Administrative Committee and other information available to the Secretary, in accordance with the applicable provisions of Marketing Agreement No. 109, as amended, and Marketing Order No. 89, as amended (20 F. R. 6435), regulating the handling of raisins produced from raisin variety grapes grown in California, effective pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U. S. C. 601 et seq.).

Consideration will be given to any data, views or arguments pertaining thereto which are filed in triplicate with the Director, Fruit and Vegetable Division, Agricultural Marketing Service, United States Department of Agriculture, Washington 25, D. C., and received not later than the close of business on the fifteenth day after the date of publication of this notice in the FEDERAL REGISTER, except that, if said fifteenth day after publication should fall on a legal holiday or Saturday or Sunday, each submission will be received by the Director not later than the close of business on the next following business day.

The proposed modification would change from 14 percent to 15 percent the permitted moisture content of natural condition Golden Seedless, Sulfur Bleached, and Soda Dipped raisins received by handlers. The committee has concluded that such a change for Golden Seedless raisins would be desirable. Available evidence indicates that natural condition Golden Seedless raisins containing 15 percent moisture as a maximum may be stored satisfactorily, and that they may be processed within the 18 percent maximum moisture content permitted by the applicable provisions of the United States Standards for Grades of Processed Raisins. The present requirements with respect to moisture content are the same for Sulfur Bleached and Soda Dipped raisins as for Golden Seedless raisins. While the production of Sulfur Bleached and Soda Dipped raisins in most years is negligible, it appears that the reasons for a change in the permitted maximum moisture content of Golden Seedless also apply to the other two varietal types. Hence, the same change in moisture content is proposed for natural condition raisins of the three varietal types.

The proposed modification is as follows:

The minimum grade and condition standards prescribed in § 989.97 for natural condition raisins, as heretofore modified (20 F. R. 7808; 21 F. R. 1; 21 F. R. 130), are further modified by changing the parenthetical phrase appearing in § 989.97 A 3 which reads "(except Golden Seedless, Sulfur Bleached, and Soda Dipped shall not exceed 14 percent)" to read: "(except Golden Seed-

less, Sulfur Bleached, and Soda Dipped shall not exceed 15 percent)".

Dated: May 24, 1956.

[SEAL]

S. R. SMITH,
Director,
Fruit and Vegetable Division.

[F. R. Doc. 56-4212; Filed, May 28, 1956; 8:50 a. m.]

[7 CFR Part 1017]

[AO-283]

HANDLING OF ONIONS GROWN IN CERTAIN DESIGNATED COUNTIES IN IDAHO AND MALHEUR COUNTY, OREGON**NOTICE OF HEARING WITH RESPECT TO PROPOSED MARKETING AGREEMENT AND ORDER**

Pursuant to the Agricultural Marketing Agreement Act of 1937, as amended (48 Stat. 31, as amended; 7 U. S. C. 601 et seq.), and in accordance with the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR 900.0 et seq.), notice is hereby given of a public hearing to be held at the Dairyman's Hall, Caldwell, Idaho, beginning at 9:30 a. m., local time, June 20, 1956, with respect to proposed Marketing Agreement No. 130 and Order No. 117, regulating the handling of onions grown in the certain designated counties in Idaho and Malheur County, Oregon. The proposed marketing agreement and order have not received the approval of the Secretary of Agriculture.

The public hearing is for the purpose of receiving evidence with respect to economic and marketing conditions which relate to the provisions of the marketing agreement and order, hereinafter set forth, or appropriate modifications thereof.

Growers and shippers in the State of Oregon as represented by the Malheur County Onion Growers Association, and in the State of Idaho as represented by the Southwestern Idaho Onion Growers Association requested a hearing on the following proposed marketing agreement and order authorizing regulation of the handling of onions in the proposed production area.

DEFINITIONS

§ 1017.1 *Secretary.* "Secretary" means the Secretary of Agriculture of the United States or any officer or employee of the United States Department of Agriculture to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated, to act in his stead.

§ 1017.2 *Act.* "Act" means Public Act No. 10, 73d Congress, as amended and as reenacted and amended by the Agricultural Marketing Agreement Act of 1937, as amended (48 Stat. 31, as amended; 7 U. S. C. 601 et seq., 68 Stat. 906, 1047).

§ 1017.3 *Person.* "Person" means an individual, partnership, corporation, association, or any other business unit.

§ 1017.4 *Production area*. "Production area" means all territory included within the boundaries of the Counties of Malheur in Oregon, and all counties south of the southern boundary of Idaho County in the State of Idaho.

§ 1017.5 *Onions*. "Onions" means all varieties of onions grown within the production area.

§ 1017.6 *Handler*. "Handler" is synonymous with "shipper" and means any person (except a common or contract carrier of onions owned by another person) who handles onions or causes onions to be handled.

§ 1017.7 *Handle*. "Handle" or "ship" means to sell or transport onions within the production area or between the production area and any point outside thereof.

§ 1017.8 *Grading*. "Grading" means the sorting, or separation of onions into grades and sizes for market purposes.

§ 1017.9 *Grade and size*. "Grade" means any one of the officially established grades of onions and "size" means any one of the officially established sizes of onions, as defined and set forth in the "United States Standards for Northern Grown Onions," issued by the United States Department of Agriculture, effective July 31, 1944, or amendments thereto, or modification thereof, or variations based thereon.

§ 1017.10 *Producer*. "Producer" means any person engaged in the production of onions for market.

§ 1017.11 *Committee*. "Committee" means the Idaho-Eastern Oregon Onion Administrative Committee established pursuant to § 1017.20.

§ 1017.12 *Fiscal period*. "Fiscal period" means the period beginning and ending on the dates approved by the Secretary pursuant to recommendations by the committee.

§ 1017.13 *Varieties*. "Varieties" means and includes all classifications or subdivision of onions according to those definitive characteristics now or hereafter recognized by the United States Department of Agriculture.

§ 1017.14 *Export*. "Export" means shipment of onions beyond the boundaries of continental United States.

§ 1017.15 *District*. "District" means each of the geographical divisions of the production area initially established or as reestablished pursuant to § 1017.27.

§ 1017.16 *Pack*. "Pack" means a unit of onions in any type of container and which falls within specific weight limits or within specific grade limits, or both, recommended by the committee and approved by the Secretary.

§ 1017.17 *Container*. "Container" means a sack, box, bag, crate, hamper, basket, carton, package, or any other type of unit used in the packaging, transportation, sale, shipment or handling of onions.

ADMINISTRATIVE COMMITTEE

§ 1017.20 *Establishment and membership*. (a) The Idaho-Eastern Oregon

Onion Administrative Committee consisting of ten members, of whom six shall be producers and four shall be handlers, is hereby established. For each member of the committee there shall be an alternate who shall have the same qualifications as the member.

(b) An alternate member of the committee shall act in the place and stead of the member for whom he is an alternate, during such member's absence and perform other duties as assigned. In the event of the death, removal, resignation or disqualification of a member his alternate shall act for him until a successor for such member is selected and qualified.

§ 1017.21 *Procedure*. (a) Seven members of the committee shall be necessary to constitute a quorum and seven concurring votes will be required to pass any motion or approve any committee action.

(b) The committee may provide for meeting by telephone, telegraph, or other means of communication and any vote cast at such meeting shall be confirmed promptly in writing: *Provided*, That if any assembled meeting is held, all votes shall be cast in person.

§ 1017.22 *Selection*. (a) Persons selected as committee members or alternates to represent producers or handlers shall be producers or handlers, respectively, or officers or employees of a corporate producer or handler, respectively, in the district for which selected.

(b) The Secretary shall select one producer member of the committee, with his respective alternate from each of the districts designated in § 1017.27. The Secretary shall also select one handler member of the committee, with his respective alternate, from Idaho and from Oregon and two handler members with their respective alternates from the production area at large.

(c) Any person selected by the Secretary as a committee member or as an alternate shall qualify by filing a written acceptance with the Secretary.

§ 1017.23 *Term of Office*. (a) The term of office of committee members and alternates shall be for two years beginning on the first day of June and continuing until May 31, and until their successors are selected and have qualified. The terms of office of such members and alternates shall be so determined that one-half of the total Committee membership shall terminate each May 31.

(b) Committee members and alternates shall serve during the term of office for which they are selected and have qualified, or during that portion thereof beginning on the date on which they qualify during the current term of office and continuing until the end thereof, and until their successors are selected and have qualified.

§ 1017.24 *Powers*. The committee shall have the following powers:

(a) To administer the provisions of this part in accordance with its terms;

(b) To make rules and regulations to effectuate the terms and provisions of this part;

(c) To receive, investigate, and report to the Secretary complaints of violation of the provisions of this part; and

(d) To recommend to the Secretary amendments to this part.

§ 1017.25 *Duties*. It shall be the duty of the committee:

(a) At the beginning of each fiscal year, to meet and organize, to select a chairman and such other officers as may be necessary, to select subcommittees of committee members, and to adopt such rules and regulations for the conduct of its business as it may deem advisable;

(b) To act as intermediary between the Secretary and any producer or handler;

(c) To furnish to the Secretary such available information as he may request;

(d) To appoint such employees, agents, and representatives as it may deem necessary and to determine the salaries and define the duties of each such person;

(e) To investigate, from time to time, and to assemble data on the growing, harvesting, shipping, and marketing conditions with respect to onions, and to engage in such research and service activities which relate to the handling or marketing of onions as may be approved by the Secretary;

(f) To keep minutes, books, and records which clearly reflect all of the acts and transactions of the committee and such minutes, books, and records shall be subject to examination at any time by the Secretary or his authorized agent or representative;

(g) To make available to producers and handlers the committee voting record on recommended regulations and on other matters of policy;

(h) At the beginning of each fiscal period, to submit to the Secretary a budget of its expenses for such fiscal period, together with a report thereon;

(i) To cause the books of the committee to be audited by a competent accountant at least once each fiscal period, and at such other time as the committee may deem necessary or as the Secretary may request. The report of such audit shall show the receipt and expenditure of funds collected pursuant to this subpart; a copy of each such report shall be furnished to the Secretary and a copy of each such report shall be made available at the principal office of the committee for inspection by producers and handlers; and

(j) To consult, cooperate and exchange information with other onion marketing committees and other individuals or agencies in connection with all proper committee activities and objectives under this subpart.

§ 1017.26 *Expenses and compensation*. Committee members and their respective alternates when acting on committee business, shall be reimbursed for expenses necessarily incurred by them in the performance of their duties and in the exercise of their powers under this subpart, and may receive compensation at a rate to be determined by the committee and approved by the Secretary, not to exceed \$10 for each day, or portion thereof, spent in attending to committee business: *Provided*, That at its

discretion the committee may request the attendance of one or more alternates at any or all meetings, notwithstanding the expected or actual presence of the respective members, and may pay expenses and compensation, as aforesaid.

§ 1017.27 *Districts.* (a) For the purpose of selecting committee members, the following districts of the production area are hereby initially established:

District No. 1: Emmett, Payette, Weiser Area District. To include all territory within the boundary of Washington, Payette and Gem counties, in Idaho.

District No. 2: Oregon Slope. All territory within a boundary following the Snake River north from the junction of the Malheur, to the West line of Range 46E. Thence South along this line to the South line of T. 17S, and thence East along this line to its junction with the Malheur River, and thence East along the Malheur River to the junction with the Snake River, the point of beginning.

District No. 3: Ontario, Vale, Jamieson, Brogan. All territory within a boundary running West along the Malheur River from its junction with the Snake River, to the intersection of the Malheur with the South line of T. 17 South, thence West along this line to the West line of Range 45E; thence North along this line to the North boundary of Malheur County; thence West along this line to the West line of Range 42E; thence South along this line to the South line of T. 20S; thence East along this line to the East line of Range 44E; thence East North along this line to the South line of T. 18S; thence East along this line to its intersection with the Hyline Canal; thence North along the Hyline Canal and siphon to its intersection with Highway 28; thence East along Highway 28 to Cairo Jet; thence South along Highway 20 to the junction of Oregon Avenue; thence East along Oregon Avenue to the Snake River; thence North along the Snake River to its junction with the Malheur, the point of beginning.

District No. 4: Nyssa and Adrian. All territory within a boundary beginning at the junction of Oregon Avenue and the Snake River; thence West along Oregon Avenue to its junction with Highway 20, thence North along Highway 20 to Cairo Junction; thence West along Highway 28 to its junction with the Hyline Canal siphon; thence South and West along the Hyline Canal to its junction with the Owyhee River; thence East along the Owyhee River to its junction with the East line of Range 45E; thence South along this line to the South line of T. 22S; thence East along this line to the Oregon-Idaho State line; thence North along the State line to the junction of the Snake River and Oregon Avenue, the point of beginning.

District No. 5: Parma, Wilder, Nampa and Notus Area District. To include all territory within the boundary of Canyon County, Idaho.

District No. 6: Homedale, Marsing, Meridian, Melba, Mountain Home, Glenns Ferry and Twin Falls Area District. To include all other counties south of the southern boundary of Idaho County in the State of Idaho.

(b) The Secretary, upon the recommendation of the committee, may reestablish districts within the production area and may reapportion committee membership among the various districts: *Provided*, That in recommending any such changes in districts or representation, the committee shall give consideration to: (1) The relative importance of new areas of production; (2) changes in the relative position, with respect to production of existing districts; (3) the geographic location of areas of produc-

tion as they would affect the efficiency of administering the marketing agreement and order; and (4) other relevant factors: *Provided further*, That there shall be no change in the total number of committee members or in the total number of districts.

§ 1017.28 *Nominations.* The Secretary may select the members of the Idaho-Eastern Oregon Onion Committee and their respective alternates from nominations which may be made in the following manner:

(a) The committee shall hold or cause to be held prior to April 1 of each year, after the effective date of this subpart, a meeting or meetings of producers and of handlers in the production area;

(b) In arranging for such meetings the committee may, if it deems desirable, utilize the services and facilities of existing organizations and agencies;

(c) Nominations for committee members and alternate members shall be supplied to the Secretary in such manner and form as he may prescribe, not later than 30 days prior to the end of each fiscal period;

(d) Only producers may participate in designating nominees for producer committee members and their alternates and only handlers may participate in designating nominees for handler committee members and their alternates;

(e) Each person who is both a handler and a producer may vote either as a handler or as a producer and may elect the group in which he votes; and

(f) Regardless of the number of districts in which a person handles or produces onions, each such person is entitled to cast only one vote on behalf of himself, his agents, subsidiaries, affiliates and representatives, in designating nominees for committee members and alternates. In the event a person is engaged in handling or producing onions in more than one district, such person shall elect the district within which he may participate as aforesaid in designating nominees. An eligible voter's privilege of casting only one vote, as aforesaid, shall be construed to permit a voter to cast one vote for each position to be filled in the respective district in which he elects to vote.

§ 1017.29 *Failure to nominate.* If nominations are not made within the time and in the manner specified by the Secretary pursuant to § 1017.28, the Secretary may, without regard to nominations, select the committee members and alternates on the basis of the representation provided for in this subpart.

§ 1017.30 *Vacancies.* To fill any vacancy occasioned by the failure of any person selected as a committee member or as an alternate to qualify, or in the event of the death, removal, resignation, or disqualification of any qualified member or alternate, a successor for his unexpired term may be selected by the Secretary from nominations made in the manner specified in § 1017.28, or the Secretary may select such committee member or alternate from previously unselected nominees on the current nominee list from the district involved. If the names of nominees to fill any such

vacancy are not made available within 30 days after such vacancy occurs, the Secretary may fill such vacancy without regard to nominations, which selection shall be made on the basis of the representation provided for in this subpart.

EXPENSES AND ASSESSMENTS

§ 1017.40 *Expenses.* The committee is authorized to incur such expenses as the Secretary may find are reasonable and likely to be incurred during each fiscal period for its maintenance and functioning, and for such purposes as the Secretary, pursuant to this subpart, determines to be appropriate. Handlers shall share expenses upon the basis of a fiscal period. Each handler's share of such expense shall be proportionate to the ratio between the total quantity of onions handled by him as the first handler thereof during a fiscal period and the total quantity of onions handled by all handlers as first handlers thereof during the same period.

§ 1017.41 *Budget.* At the beginning of each fiscal period, and as may be necessary thereafter, the committee shall prepare a budget of estimated income and expenditures necessary for the administration of this part. The committee may recommend a rate of assessment calculated to provide adequate funds to defray its proposed expenditures. The committee shall present such budget promptly to the Secretary with an accompanying report showing the basis for its calculations.

§ 1017.42 *Assessments.* (a) The funds to cover the committee's expenses pursuant to § 1017.40 shall be acquired by the levying of assessments upon handlers as provided in this subpart. Each handler who ships onions as the first handler thereof shall pay assessments to the committee upon demand, which assessments shall be in payment of such handler's pro rata share of such expenses.

(b) Assessments shall be levied upon handlers at rates established by the Secretary. Such rates may be established upon the basis of the committee's recommendations or other available information.

(c) At any time during or subsequent to a given fiscal period, the committee may recommend the approval of an amended budget and an increase in the rate of assessment. Upon the basis of such recommendation, or other available information, the Secretary may approve an amended budget and increase the rate of assessment. Such increase shall be applicable to all onions which were regulated under this part and which were shipped by the first handler thereof during such fiscal period.

§ 1017.43 *Accounting.* (a) All funds received by the committee pursuant to the provisions of this part shall be used solely for the purposes specified in this part.

(b) The Secretary may at any time require the committee, its members and alternates, employees, agents, and all other persons to account for all receipts and disbursements, funds, property, or

records for which they are responsible. Whenever any person ceases to be a member or alternate of the committee, he shall account for all receipts, disbursements, funds, and property (including but not being limited to books and other records) pertaining to the committee's activities for which he is responsible, and deliver all such property and funds in his hands to such successor, agency, or person as may be designated by the Secretary, and shall execute such assignments and other instruments as may be necessary or appropriate to vest in each such successor, committee or designated person, the right to all of such property and funds and all claims vested in such person.

(c) The committee may make recommendations to the Secretary for one or more of the members thereof, or any other person, to act as a trustee for holding records, funds, or any other committee property during periods of suspension of this part, or during any period or periods when regulations are not in effect and; if the Secretary determines such action appropriate, he may direct that such person or persons shall act as trustee or trustees for the committee.

§ 1017.44 Refunds. Monies arising from the excess of assessments over expenses shall be accounted for as provided in this section. Each handler entitled to a proportionate refund of the excess assessments at the end of a fiscal period shall be credited with such refund against the operations of the following fiscal period unless he demands payment thereof, in which event such proportionate refund shall be paid to him. However, the Secretary, upon recommendation of the committee may determine that it is appropriate for the maintenance and functioning of the committee that some of the funds remaining at the end of a fiscal period which are in excess of the expenses necessary for committee operations during such period may be carried over into following periods as a reserve for possible liquidation. Upon approval by the Secretary, such reserve may be used upon termination of this order to liquidate the affairs of the committee: *Provided*, That upon termination of this part any monies in the reserve for liquidation which are not required to defray the necessary expenses of committee liquidation shall, to the extent practical, be returned upon a pro rata basis to all persons from whom such funds were collected.

RESEARCH AND DEVELOPMENT

§ 1017.47 Research and development. The committee, with the approval of the Secretary, may provide for the establishment of research and development projects designed to assist, improve, or promote the marketing, distribution, and consumption of onions.

QUALITY REGULATION

§ 1017.50 Marketing policy—(a) Preparation. Prior to each marketing season the committee shall consider and prepare a proposed policy for the marketing of onions. In developing its marketing policy the committee shall investigate relevant supply and demand condi-

tions for onions. In such investigations the committee shall give appropriate consideration to the following:

(1) Market prices for onions, including prices by variety, grade, size, and quality in different packs, or any other shipping unit;

(2) Supply of onions by grade, size, and quality in the production area and in other production areas;

(3) The trend and level of consumer income;

(4) Establishing and maintaining orderly marketing conditions for onions;

(5) Orderly marketing of onions as will be in the public interest; and

(6) Other relevant factors.

(b) *Reports.* (1) The committee shall submit a report to the Secretary setting forth the aforesaid marketing policy and the committee shall notify producers and handlers of the contents of such report.

(2) In the event it becomes advisable to shift from such marketing policy because of changed supply and demand conditions, the committee shall prepare a new marketing policy in accordance with the manner previously outlined. The committee shall submit a report thereon to the Secretary and notify producers and handlers of the contents of such report on the revised or amended marketing policy.

§ 1017.51 Recommendations for regulations. The committee shall recommend regulations to the Secretary whenever it finds that such regulations, as provided in § 1017.52, will tend to effectuate the declared policy of the act. The committee also may recommend modification, suspension, or termination of any regulation, or amendments thereto, in order to facilitate shipments of onions for the purposes authorized in § 1017.53. The committee may also recommend termination or suspension of any regulation issued under this part.

§ 1017.52 Issuance of regulations. (a) The Secretary shall limit the shipment of onions by any one or more of the methods hereinafter set forth whenever he finds from the recommendations and information submitted by the committee, or from other available information, that such regulation would tend to effectuate the declared policy of the act. Such limitation may:

(1) Regulate in any or all portions of the production area, the shipment of particular grades, sizes, or qualities, of any or all varieties of onions, or both, during any period;

(2) Regulate the shipment of particular grades, sizes, or qualities, of onions differently, for different varieties, for different portions of the production area, for different packs, for different containers, or for any combination of the foregoing, during any period;

(3) Provide a method through rules and regulations, issued pursuant to this part for fixing the size, capacity, weight, dimensions, or pack of the container, or containers, which may be used in the packaging or handling of onions, or both;

(4) Regulate the shipment of onions by establishing, in terms of grades, sizes, or both, minimum standards of quality; or

(5) Prohibit the handling of onions during a specified period or periods. No regulation issued pursuant to this subparagraph shall be effective for more than 96 consecutive hours: *Provided*, That not less than 72 consecutive hours shall elapse between the termination of any such period of limitation and the beginning of the next such period.

(b) In the event the handling of onions is regulated pursuant to paragraph (a) (5) of this section, no handler shall handle any such onions which were prepared for market during the effective period of such regulation.

(c) The Secretary may amend any regulation issued under this part whenever he finds that such amendment would tend to effectuate the declared policy of the act. The Secretary may also terminate or suspend any regulation or amendment thereof whenever he finds that such regulation or amendment obstructs or no longer tends to effectuate the declared policy of the act.

§ 1017.53 Modification, suspension, or termination. Upon the basis of recommendations and information submitted by the committee, or other available information, the Secretary shall modify, suspend, or terminate regulations issued pursuant to §§ 1017.42, 1017.52, 1017.60, or any combination thereof, in order to facilitate shipments of onions for the following purposes whenever he finds that it will tend to effectuate the declared policy of the act:

(a) For grading or storage within the production area;

(b) For export;

(c) For manufacture or conversion into specified products;

(d) For livestock feed;

(e) For seed; and

(f) For other purposes which may be specified.

§ 1017.54 Minimum quantity regulation. The committee with the approval of the Secretary, may establish for any or all portions of the production area minimum quantities below which shipments will be free from regulations issued pursuant to §§ 1017.42, 1017.52, 1017.53, 1017.60, or any combination thereof.

§ 1017.55 Notification of regulation. The Secretary shall notify the committee of any regulations issued or of any modification, suspension, or termination thereof. The committee shall give reasonable notice thereof to handlers.

§ 1017.56 Safeguards. (a) The committee, with the approval of the Secretary, may prescribe adequate safeguards to prevent shipments pursuant to §§ 1017.53 or 1017.54 from entering channels of trade for other than the specific purpose authorized therefor, and rules governing the issuance and the contents of Certificates of Privilege if such certificates are prescribed as safeguards by the committee. Such safeguards may include requirements that:

(1) Handlers shall file applications with the committee to ship onions pursuant to § 1017.53;

(2) Handlers shall obtain inspection provided by § 1017.60, or pay the pro rata share of expenses provided by § 1017.42, or both, in connection with

onion shipments effected under the provisions of § 1017.53: *Provided*, That such inspection or payment of expenses may be required at different times than otherwise specified by the aforesaid sections; and

(3) Handlers shall obtain Certificates of Privilege from the committee for shipments of onions effected or to be effected under the provision of § 1017.53.

(b) The committee may rescind or deny Certificates of Privilege to any shipper if proof is obtained that onions shipped by him for the purposes stated in § 1017.53 were handled contrary to the provisions of this subpart.

(c) The Secretary shall have the right to modify, change, alter, or rescind any safeguards prescribed and any certificates issued by the committee pursuant to the provisions of this section.

(d) The committee shall make reports to the Secretary, as requested, showing the number of applications for such certificates, the quantity of onions covered by such applications, the number of such applications denied and certificates granted, the quantity of onions shipped under duly issued certificates, and such other information as may be requested.

INSPECTION

§ 1017.60 *Inspection and certification.* (a) During any period in which shipments of onions are regulated pursuant to § 1017.42, § 1017.52, or § 1017.53, or any combination thereof, no handler shall ship onions unless each such shipment is inspected by an authorized representative of the Federal-State Inspection Service, or such other inspection service as the Secretary shall designate, except when relieved from such requirements pursuant to § 1017.53 or § 1017.54, or both.

(b) Regrading, resorting, or repacking any lot of onions shall invalidate any prior inspection certificates insofar as the requirements of this section are concerned. No handler shall ship onions after they have been regraded, resorted, repacked, or in any other way further prepared for market, unless shipment of such onions is inspected by an authorized representative of the Federal-State Inspection Service, or such other inspection service as the Secretary shall designate.

(c) Upon recommendation of the committee, and approval of the Secretary, all lots so inspected and certified shall be identified by appropriate seals, stamps, or tags to be affixed to the containers by the handler under the direction and supervision of the Federal-State or Federal Inspector or the Committee. Master containers may bear the identification instead of the individual containers within said master container.

(d) Insofar as the requirements of this section are concerned, the length of time for which an inspection certificate is valid may be established by the committee with the approval of the Secretary.

(e) When onions are inspected in accordance with the requirements of this section, a copy of each inspection certificate issued shall be made available to the committee by the inspection service.

EFFECTIVE TIME AND TERMINATION

§ 1017.70 *Effective time.* The provisions of this subpart, or any amendment thereto, shall become effective at such time as the Secretary may declare and shall continue in force until terminated in one of the ways specified in this subpart.

§ 1017.71 *Termination.* (a) The Secretary may at any time terminate the provisions of this subpart by giving at least one day's notice by means of a press release or in any other manner which he may determine.

(b) The Secretary may terminate or suspend the operations of any or all of the provisions of this subpart whenever he finds that such provisions do not tend to effectuate the declared policy of the act.

(c) The Secretary shall terminate the provisions of this subpart at the end of any fiscal period whenever he finds that such termination is favored by a majority of producers who, during a representative period, have been engaged in the production for market of onions: *Provided*, That such majority has, during such representative period, produced for market more than fifty percent of the volume of such onions produced for market.

(d) The provisions of this subpart shall, in any event, terminate whenever the provisions of the act authorizing them cease to be in effect.

§ 1017.72 *Proceedings after termination.* (a) Upon the termination of the provisions of this subpart the then functioning members of the committee shall continue as joint trustees, for the purpose of liquidating the affairs of the committee, of all the funds and property then in the possession of or under control of the committee, including claims for any funds unpaid or property not delivered at the time of such termination. Action by said trusteeship shall require the concurrence of a majority of the said trustees.

(b) The said trustees shall continue in such capacity until discharged by the Secretary; shall, from time to time, account for all receipts and disbursements and deliver all property on hand, together with all books and records of the committee and of the trustees, to such person as the Secretary may direct; and shall, upon request of the Secretary, execute such assignments or other instruments necessary or appropriate to vest in such person full title and right to all of the funds, property, and claims vested in the committee or the trustees pursuant to this subpart.

(c) Any person to whom funds, property, or claims have been transferred or delivered by the committee or its members pursuant to this section, shall be subject to the same obligations imposed upon the members of the committee and upon the said trustees.

§ 1017.73 *Effect of termination or amendment.* Unless otherwise expressly provided by the Secretary, the termination of this subpart or of any regulation issued pursuant to this subpart, or the issuance of any amendments to either thereof, shall not (a) affect or waive any

right, duty, obligation, or liability which shall have arisen or which may thereafter arise in connection with any provision of this subpart or any regulation issued under this subpart, nor (b) release or extinguish any violation of this subpart or of any regulations issued under this subpart, nor (c) affect or impair any rights or remedies of the Secretary or of any other person with respect to any such violations.

REPORTS

§ 1017.80 *Reports.* Upon request of the committee, made with approval of the Secretary, each handler shall furnish to the committee, in such manner and at such time as it may prescribe, such reports and other information as may be necessary for the committee to perform its duties under this part.

(a) Such reports may include, but are not necessarily limited to, the following:

(1) The quantities of onions received by a handler; (2) the quantities disposed of by him, segregated as to the respective quantities subject to regulation and not subject to regulation; (3) the date of each such disposition and the identification of the carrier transporting such onions; and (4) identification of the inspection certificates relating to the onions which were handled, pursuant to §§ 1017.53 and 1017.54.

(b) All such reports shall be held under appropriate protective classification and custody by the committee, or duly appointed employees thereof, so that the information contained therein which may adversely affect the competitive position of any handler in relation to other handlers will not be disclosed. Compilations of general reports from data submitted by handlers is authorized, subject to prohibition of disclosure of individual handlers' identities or operations.

(c) Each handler shall maintain for at least two succeeding years such records of the onions received and disposed of by such handler as may be necessary to verify the reports he submits to the committee pursuant to this section.

MISCELLANEOUS PROVISIONS

§ 1017.81 *Compliance.* Except as provided in this part, no handler shall handle onions, the handling of which has been prohibited by the Secretary in accordance with provisions of this part, and no handler shall handle onions except in conformity to the provisions of this part.

§ 1017.82 *Right of the Secretary.* The members of the committee (including successors and alternates), and any agent or employee appointed or employed by the committee, shall be subject to removal or suspension by the Secretary at any time. Each and every order, regulation, decision, determination or other act of the committee shall be subject to the continuing right of the Secretary to disapprove of the same at any time. Upon such disapproval, the disapproved action of the said committee shall be deemed null and void, except as to acts done in reliance thereon or in compliance therewith prior to such disapproval by the Secretary.

§ 1017.83 *Duration of immunities.* The benefits, privileges, and immunities conferred upon any person by virtue of this subpart shall cease upon the termination of this subpart, except with respect to acts done under and during the existence of this subpart.

§ 1017.84 *Agents.* The Secretary may, by designation in writing, name any person, including any officer or employee of the United States, or name any agency in the United States Department of Agriculture, to act as his agent or representative in connection with any of the provisions of this part.

§ 1017.85 *Derogation.* Nothing contained in this subpart is, or shall be construed to be, in derogation or in modification of the rights of the Secretary or of the United States to exercise any powers granted by the act or otherwise, or, in accordance with such powers, to act in the premises whenever such action is deemed advisable.

§ 1017.86 *Personal liability.* No member or alternate of the committee nor any employee or agent thereof, shall be held personally responsible, either individually or jointly with others, in any way whatsoever, to any handler or to any person for errors in judgment, mistakes, or other acts, either of commission or omission, as such member, alternate, agent, or employee, except for acts of dishonesty, wilful misconduct, or gross negligence.

§ 1017.87 *Separability.* If any provision of this subpart is declared invalid, or the applicability thereof to any person, circumstance, or thing is held invalid, the validity of the remainder of this subpart, or the applicability thereof to any other person, circumstance, or thing, shall not be affected thereby.

§ 1017.88 *Amendments.* Amendments to this subpart may be proposed, from time to time, by the committee or by the Secretary.

§ 1017.89 *Counterparts.* This agreement may be executed in multiple counterparts and when one counterpart is signed by the Secretary all such counterparts shall constitute, when taken together, one and the same instrument as if all signatures were contained in one original.¹

§ 1017.90 *Additional parties.* After the effective date hereof, any handler who has not previously executed this agreement may become a party hereto if a counterpart hereof is executed by him and delivered to the Secretary. This agreement shall take effect as to such new contracting party at the time such counterpart is delivered to the Secretary, and the benefits, privileges, and immunities conferred by this agreement shall then be effective as to such new contracting party.¹

§ 1017.91 *Order with marketing agreement.* Each signatory handler favors and approves the issuance of an

¹ Applicable only to the proposed marketing agreement.

order by the Secretary regulating the handling of onions in the same manner as is provided for in this agreement; and each signatory handler hereby requests the Secretary to issue, pursuant to the act, such an order.¹

Copies of this notice may be obtained from the Hearing Clerk, Administration Building, United States Department of Agriculture, Washington 25, D. C. or may be there inspected.

Dated: May 24, 1956.

[SEAL] F. R. BURKE,
Acting Deputy Administrator.

[F. R. Doc. 56-4213; Filed, May 28, 1956;
8:50 a. m.]

CIVIL AERONAUTICS BOARD

[14 CFR Parts 43, 60]

[Draft Release 56-7A]

VFR MINIMUMS WITHIN CONTROL ZONES FOR FLIGHTS ISSUED TRAFFIC CLEARANCE

SUPPLEMENTAL NOTICE OF PROPOSED RULE MAKING

The Bureau of Safety Regulation circulated as Civil Air Regulations Draft Release No. 56-7 on March 5, 1956, proposed amendments to Parts 43 and 60 of the Civil Air Regulations on the subject: "VFR Minimums Within Control Zones for Flights Issued Traffic Clearance." Reference is made to the draft release for a full explanation of the purpose and background of the proposed rules.

The draft release stated that all persons desiring to participate in the making of the proposed rules should submit comment to the Civil Aeronautics Board prior to May 25, 1956. The Aircraft Owners and Pilots Association requested an extension of the date for return of comment so that it could have sufficient time to secure the opinions of all of its members with respect to the proposed amendments. In view of the fact that such industry opinion will greatly aid in giving proper consideration to the issues raised by the proposals, it appears that the requested extension for the return of comment will serve a useful purpose.

Accordingly, the Bureau is extending the time for submission of comment with respect to Civil Air Regulations Draft Release No. 56-7, and the Bureau will consider written comment submitted not later than June 25, 1956. Comments should be submitted in duplicate and addressed to the Civil Aeronautics Board, attention Bureau of Safety Regulation, Washington 25, D. C.

(Sec. 205 (a), 52 Stat. 984, 49 U. S. C. 425 (a), Interpret or apply secs. 601-610, 52 Stat. 1007-1012, as amended, 49 U. S. C. 551-560)

Dated at Washington, D. C., May 24, 1956.

By the Bureau of Safety Regulation.

[SEAL] JOHN M. CHAMBERLAIN,
Director.

[F. R. Doc. 56-4225; Filed, May 28, 1956;
8:51 a. m.]

FEDERAL RESERVE SYSTEM

[12 CFR Part 222]

[Reg. Y]

BANK HOLDING COMPANIES

NOTICE OF PROPOSED RULE MAKING

The Board of Governors of the Federal Reserve System is considering the adoption of a new Part 222 (Regulation Y) to be issued pursuant to authority contained in the Bank Holding Company Act of 1956 (70 Stat. 133).

The proposed Part 222 is designed generally to implement the provisions of the Bank Holding Company Act of 1956, and particularly to prescribe procedures for the filing of registration statements by bank holding companies and for the handling of applications for prior approval of the Board with respect to transactions requiring such approval under that act.

This notice is published pursuant to section 4 of the Administrative Procedure Act and section 2 of the rules of procedure of the Board of Governors of the Federal Reserve System (12 CFR 262.2).

To aid in the consideration of this matter the Board will be glad to receive from interested persons any relevant data, views or arguments. Although such material may be sent directly to the Board it is preferable that it be sent to the Federal Reserve Bank of the district which will forward it to the Board to be considered. All such material should be submitted in writing to be received not later than June 25, 1956.

The proposed Part 222 is as follows:

- Sec.
- 222.1 Authority and scope.
 - 222.2 Definitions.
 - 222.3 Registration.
 - 222.4 Acquisition of bank shares or assets.
 - 222.5 Interests in nonbanking organizations.
 - 222.6 Hearings and proceedings.
 - 222.7 Reports and examinations.
 - 222.8 Borrowing by bank holding company or its subsidiaries.
 - 222.9 Statutory penalties.

§ 221.1 *Authority and scope.* This part is issued pursuant to the Bank Holding Company Act of 1956. Provisions relating to holding company affiliates, as defined in section 2 (c) of the Banking Act of 1933, are contained in Part 216 of this chapter (Reg. P).¹

§ 222.2 *Definitions.*—(a) *Bank holding company.* Subject to the exceptions stated in paragraph (b) of this section, the term "bank holding company" means any company:

(1) Which directly or indirectly owns, controls, or holds with power to vote either:

(i) 25 per centum or more of the voting shares of each of two or more banks, or

¹ The Bank Holding Company Act of 1956 and this part are in addition to, and do not take the place of, provisions of other laws, such as section 5144 of the Revised Statutes, and Part 216 of this chapter (Reg. P) thereunder, which relate to holding company affiliates as distinguished from bank holding companies.

(ii) 25 per centum or more of the voting shares of any other company which is or becomes a bank holding company;

(2) Which controls in any manner the election of a majority of the directors of each of two or more banks;

(3) For the benefit of whose shareholders or members 25 per centum or more of the voting shares of each of two or more banks or of a bank holding company is held by trustees; or

(4) Which is a successor to any company that falls within subparagraphs (1), (2), or (3) of this paragraph, and any such successor shall be deemed to be a bank holding company from the date as of which its predecessor company became a bank holding company.

(b) *Exceptions from definition of "bank holding company".* No company shall be considered a bank holding company:

(1) If it is a bank and it would otherwise be a bank holding company only by virtue of its ownership or control of shares in a fiduciary capacity, provided such shares are not held for the benefit of the shareholders of such bank;

(2) If (i) it is registered under the Investment Company Act of 1940 and was so registered prior to May 15, 1955, or is affiliated with any such registered company in such manner as to constitute it an affiliated company within the meaning of that act, and (ii) it does not directly own 25 per centum or more of the voting shares of each of two or more banks;

(3) If it would otherwise be a bank holding company only by virtue of its ownership or control of shares acquired by it in connection with its underwriting of securities and if such shares are held only for such period of time as will permit the sale thereof upon a reasonable basis;

(4) If it was formed for the sole purpose of participating in a proxy solicitation and would otherwise be a bank holding company only by virtue of its control of voting rights of shares acquired in the course of such solicitation; or

(5) If at least 80 per centum of its total assets are composed of holdings in the field of agriculture, and for this purpose the term "agriculture" includes farming in all its branches, including fruitgrowing, dairying, the raising of livestock, bees, fur-bearing animals, or poultry, forestry or lumbering operations, and the production of naval stores, and operations directly related thereto.

(c) *Company.* The term "company" means any corporation (including a bank), business trust, association, or similar organization, except:

(1) Any corporation the majority of the shares of which are owned by the United States or by any State;

(2) Any corporation or community chest, fund, or foundation, organized and operated exclusively for religious, charitable, or education purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual, and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation; and

(3) Any partnership.

(d) *Bank.* The term "bank" means any national banking association or any State bank, savings bank, or trust company, but shall not include any organization operating under section 25 (a) of the Federal Reserve Act, or any organization which does not do any business within the United States.

(e) *State member bank.* The term "State member bank" means any State bank which is a member of the Federal Reserve System.

(f) *District bank.* The term "District bank" means any State bank organized or operating under the Code of Law for the District of Columbia.

(g) *Subsidiary.* The term "subsidiary", as used with respect to a specified bank holding company, means:

(1) Any company 25 per centum or more of whose voting shares (excluding shares owned by the United States or by any company wholly owned by the United States) is owned or controlled by such bank holding company;

(2) Any company the election of a majority of whose directors is controlled in any manner by such bank holding company; or

(3) Any company 25 per centum or more of whose voting shares is held by trustees for the benefit of the shareholders or members of such bank holding company.

(h) *Successor.* The term "successor" includes any company which acquires directly or indirectly from a bank holding company shares of any bank, when and if the relationship between such company and such bank holding company is such that the transaction effects no substantial change in the control of such bank or beneficial ownership of such shares of such bank.

(i) *Board.* The term "Board" means the Board of Governors of the Federal Reserve System.

(j) *The act.* The term "the act" means the Bank Holding Company Act of 1956.

(k) *Federal Reserve Bank.* The term "Federal Reserve Bank" as used in this part with respect to the filing of registration statements, applications, requests, or reports by a bank holding company or other company shall mean the Federal Reserve Bank of the Federal Reserve district in which such company has its principal office.

§ 222.4 *Registration.*—(a) *Registration statement.* On or before November 5, 1956, or within 180 days after it becomes a bank holding company, whichever is later, each bank holding company shall register with the Board by filing with the Federal Reserve Bank a registration statement, in duplicate. Upon timely application by any bank holding company and upon a satisfactory showing as to the need therefor, the Board in its discretion may extend the time prescribed in this paragraph for the filing of a registration statement by such bank holding company.

(b) *Date of registration.* The date of registration of a bank holding company shall be the date on which its registration statement is received by the Federal Reserve Bank with which such statement is required to be filed.

§ 222.4 *Acquisition of bank shares or assets.*—(a) *Transactions requiring Board approval.* Except with the prior approval of the Board or except as provided in paragraph (b) of this section:

(1) No action shall be taken which will result in any company becoming a bank holding company within the meaning of § 222.2 (a);

(2) No bank holding company shall acquire direct or indirect ownership or control of any voting shares of any bank;

(3) No bank holding company which is not a bank and no nonbanking subsidiary of a bank holding company shall acquire all or substantially all of the assets of a bank; and

(4) No bank holding company shall merge or consolidate with any other bank holding company.

(b) *Excepted transactions.* Prior approval by the Board is not necessary with respect to any of the following transactions:

(1) The acquisition by a bank holding company of direct or indirect ownership or control of any voting shares of any bank if, after such acquisition, such company will not directly or indirectly own or control more than 5 per centum of the voting shares of such bank;

(2) The acquisition by a bank holding company of additional shares in a bank in which such bank holding company owned or controlled a majority of the voting shares immediately prior to such acquisition; or

(3) The acquisition by a bank (whether such bank is a bank holding company or a subsidiary of a bank holding company) of the voting shares of any bank, if:

(i) Such shares are acquired in good faith in a fiduciary capacity and are not held for the benefit of the shareholders of the acquiring bank, or

(ii) Such shares are acquired in the regular course of securing or collecting a debt previously contracted in good faith: *Provided*, That any shares acquired after the date of the act in securing or collecting any such previously contracted debt shall be disposed of within a period of two years from the date on which they were acquired.

(c) *Applications which will not be approved.* No application will be approved by the Board if such approval would permit a bank holding company or any subsidiary thereof to acquire, directly or indirectly, any voting shares of, interest in, or all of substantially all of the assets of any bank which was not a subsidiary of the bank holding company on the date of enactment of the act and which is located outside the State in which such bank holding company maintains its principal office and place of business or in which it conducts its principal operations, unless the acquisition of such shares or assets of a State bank by an out-of-State bank holding company is specifically authorized by the statute laws of the State in which such bank is located, by language to that effect and not merely by implication.

(d) *Submission of application.* Application for approval by the Board of any transaction requiring such approval under paragraph (a) of this section shall

be filed, in triplicate, with the Federal Reserve Bank. Any such application shall be filed not less than 60 days before the date on which it is proposed that the transaction requiring approval be consummated. Upon timely request and upon a satisfactory showing as to the need therefor, the Board in its discretion may accept an application although submitted within such period of 60 days. A separate application shall be filed with respect to each bank the voting shares or assets of which are sought to be acquired.

(e) *Procedure on application.* A Federal Reserve Bank receiving an application under this section will forward two copies thereof to the Board. If either the applicant or the bank the voting shares or assets of which are to be acquired is a national bank or a District bank, the Board will transmit a copy of the application to the Comptroller of the Currency. If either the applicant or the bank the voting shares or assets of which are to be acquired is a State bank, the Board will transmit a copy of the application to the appropriate supervisory authority of the State in which such bank is located.

(f) *Hearings on applications.* In any case in which the Board receives written advice of disapproval of the application from the Comptroller of the Currency or the appropriate State supervisory authority, as the case may be, within 30 days from the date of receipt of the application by the notified authority, the Board will so notify the applicant in writing, directing the applicant's attention to the provisions of section 3 (b) of the act. Within three days after the date of the sending of such notice to the applicant, the Board will notify in writing the applicant and the Comptroller of the Currency or the appropriate State supervisory authority, as the case may be, of the date fixed by the Board for the commencement of a hearing on the application and of the place and time at which such hearing will be held. Any such hearing will be commenced not less than ten days nor more than thirty days after the date on which the Board sent the applicant notice of the disapproval of the Comptroller of the Currency or the appropriate State supervisory authority. All such hearings will be conducted in accordance with Part 263 of this chapter (Rules of Practice for Formal Hearings).

(g) *Action on applications.* In any case in which a hearing is held in accordance with paragraph (f) of this section, the Board, after the conclusion of such hearing, will by order grant or deny the application on the basis of the record made at such hearing. In all other cases, the Board will by order grant or deny the application after receipt by it of advice that the Comptroller of the Currency or the appropriate State supervisory authority, as the case may be, does not disapprove the application, or, if no such advice is received, after the expiration of thirty days from the date of receipt of the copy of the application by the Comptroller of the Currency or such State authority.

(h) *Factors affecting action.* In acting upon any application the Board, as

required by the act, will consider the following factors:

(1) The financial history and condition of the bank holding company and the bank concerned;

(2) The prospects of the bank holding company and the bank concerned;

(3) The character of the management of the bank holding company and the bank concerned;

(4) The convenience, needs, and welfare of the communities and the area concerned; and

(5) Whether or not the effect of the proposed transaction for which approval is desired would be to expand the size or extent of the bank holding company system involved beyond limits consistent with adequate and sound banking, the public interest, and the preservation of competition in the field of banking.

§ 222.5 *Interests in nonbanking organizations—(a) Period allowed for divestment.* Under the act, no bank holding company, except as provided in section 4 (c) of the act, shall (1) after the date of the act acquire direct or indirect ownership or control of any voting shares of any company which is not a bank, or (2) after two years after the date of the act or from the date as of which it becomes a bank holding company, whichever is later, retain direct or indirect ownership or control of any voting shares of any company which is not a bank or a bank holding company, or engage in any business other than that of banking or of managing or controlling banks or of furnishing services to or performing services for any bank of which it owns or controls 25 per centum or more of the voting shares. Upon timely request and upon a satisfactory showing of the need therefor, the Board in its discretion may extend the two-year period referred to in the preceding sentence, except that, as provided by the act, no such extension of time may be approved by the Board for more than one year at a time or for any period beyond a date five years after the date of the act or five years after the date as of which the company became a bank holding company, whichever is later.

(b) *Shares of financial, fiduciary, or insurance companies.* Any bank holding company which proposes to acquire, or to retain after the expiration of the period referred to in paragraph (2) of section 4 (a) of the act, direct or indirect ownership or control of any voting shares of a company all of the activities of which are of a financial, fiduciary, or insurance nature, may, through the Federal Reserve Bank, request the Board to determine, pursuant to section 4 (c) (6) of the act, that the activities of such company are so closely related to the business of banking or of managing or controlling banks, as conducted by such bank holding company or its banking subsidiaries, as to be a proper incident thereto and as to make it unnecessary for the prohibitions of section 4 of the act to apply in order to carry out the purposes of the act. After receipt of any such request, the Board will notify the bank holding company of the place and time fixed for a hearing on the requested determination; and, after the conclusion

of such hearing and on the basis of the record made at the hearing, the Board will by order make or decline to make the requested determination. Any such hearing shall be conducted in accordance with Part 263 of this chapter (Rules of Practice for Formal Hearings).

(c) *Tax certifications.* Any bank holding company desiring a certification by the Board for purposes of the provisions of Part VIII of Subchapter O of Chapter 1 of the Internal Revenue Code of 1954, as amended by the act, may file an application in duplicate for such certification with the Federal Reserve Bank; and any such application will be forwarded by the Federal Reserve Bank to the Board. Any application for a certification under subsections (a), (b), or (c) of section 1101 of said Part VIII shall be filed not less than sixty days in advance of the distribution, or exchange and distribution, with respect to which such certification is desired. Upon timely request by any bank holding company and upon a satisfactory showing as to the need therefor, the Board in its discretion may accept an application for any such certification although submitted within such 60-day period. The Board will by order grant or deny any application under this paragraph; and, if granted, the certification will be transmitted to the applicant and a duplicate original thereof will be forwarded to the Internal Revenue Service of the Treasury Department.

§ 222.6 *Hearings and proceedings—(a) Hearings.* In addition to hearings required by the act (see §§ 222.4 (f) and 222.5 (b)), a hearing may be ordered by the Board in its discretion with respect to any application or request under this part, either upon its own motion or upon the request of any party in interest, if the Board deems such hearing to be in the interests of the parties or the public interest. Hearings required by the act will ordinarily be held before trial examiners appointed in accordance with provisions of the Administrative Procedure Act.

(b) *Record of proceedings.* The record in any proceeding under this part upon which an order of the Board is based shall consist of the application or request filed with the Board in connection with such proceeding; any pertinent documents submitted by the party making such application or request; any views and recommendations received by the Board from the Comptroller of the Currency or the appropriate State supervisory authority pursuant to section 3 (b) of the act; the transcript of any hearing held with respect to such application or request and any report and recommendation made by the trial examiner or hearing officer before whom such hearing was held; any other document or writing relied upon by the Board in making disposition of the matter; and any order of the Board granting or denying the application or request.

(c) *Parties.* A party to any proceeding under this part shall include any person or agency named or admitted as a party, or any person who has filed in writing a request to be heard therein and

who has sufficient legal interest to be entitled to be admitted as a party.

§ 222.7 *Reports and examinations.* Each bank holding company shall furnish to the Board a report of its operations for its fiscal year ending in 1956 or the fiscal year in which it became a bank holding company, whichever is later, and for each fiscal year thereafter until it ceases to be a bank holding company. Each such annual report shall be filed, in duplicate, with the Federal Reserve Bank. Each bank holding company shall furnish to the Board such additional information at such times as the Board may require. The Board may, through the appropriate Federal Reserve Bank, examine any bank holding company or any of its subsidiaries and the cost of any such examination shall be assessed against and paid by such bank holding company. As far as possible the Board will use reports of examinations

made by the Comptroller of the Currency, the Federal Deposit Insurance Corporation, or the appropriate State bank supervisory authority for the purposes of this section.

§ 222.8 *Borrowing by bank holding company or its subsidiaries.* It is unlawful under the act for any bank which is a subsidiary of a bank holding company to make loans to, or invest in the stock or obligations of, such bank holding company or any of its subsidiaries, with certain exceptions. For statutory provisions on this subject, see section 6 of the act.

§ 222.9 *Statutory penalties.* Under the act, any company which willfully violates any provision of the act or any regulation or order issued by the Board pursuant thereto shall upon conviction be fined not more than \$1,000 for each day during which the violation con-

tinues; and any individual who willfully participates in a violation of any provision of the act shall upon conviction be fined not more than \$10,000 or imprisoned not more than one year, or both. Every officer, director, agent, and employee of a bank holding company is subject under the act to the same penalties for false entries in any book, report, or statement of such bank holding company as are applicable to officers, directors, agents, and employees of member banks of the Federal Reserve System for false entries in any books, reports, or statements of member banks under section 1005 of Title 18, U. S. Code.

BOARD OF GOVERNORS OF THE
FEDERAL RESERVE SYSTEM,

[SEAL] MERRITT SHERMAN,
Assistant Secretary.

[F. R. Doc. 56-4207; Filed, May 28, 1956;
8:49 a. m.]

NOTICES

DEPARTMENT OF COMMERCE

Federal Maritime Board

[Docket No. M-68]

GULF & SOUTH AMERICAN STEAMSHIP CO.,
INC.

NOTICE OF HEARING ON APPLICATION TO CHARTER

Notice is hereby given that a public hearing will be held on June 7, 1956, at 10:00 a. m., in Room 4519, New General Accounting Office Building, Fifth and G Streets NW., Washington, D. C., upon the application of Gulf & South American Steamship Co., Inc., to bareboat charter one (1) Victory type dry-cargo vessel for operation on Trade Route No. 31 between U. S. Gulf of Mexico ports and the West Coast of South America for a minimum period of six (6) months, pursuant to section 5 (e) of the Merchant Ship Sales Act, 1946, as amended (Public Law 591, 81st Cong.) (50 U. S. C. App. 1738).

The purpose of the hearing is to receive evidence with respect to whether the service for which such vessel is proposed to be chartered is required in the public interest and is not adequately served, and with respect to the availability of privately-owned American-flag vessels for charter on reasonable conditions and at reasonable rates for use in such service. Evidence will be received with respect to any restrictions or conditions that may be necessary or appropriate to protect the public interest in respect of such charter as may be granted and to protect privately-owned vessels against competition from vessels chartered as a result of this proceeding.

All persons having an interest in the application will be given an opportunity to be heard if present.

An Examiner from the Hearing Examiner's Office will preside at the hearing, and oral argument may be had at the conclusion of receipt of evidence. A Recommended Decision will be issued. The time for filing Exceptions thereto is

hereby restricted to seven (7) days, and no replies to Exceptions will be received.

Dated: May 25, 1956.

By order of the Federal Maritime Board.

[SEAL] GEO. A. VIEHMAN,
Assistant Secretary.

[F. R. Doc. 56-4239; Filed, May 28, 1956;
8:51 a. m.]

CIVIL AERONAUTICS BOARD

[Docket No. 4294]

NORTHWEST AIRLINES, INC.; PITTSBURGH-
CLEVELAND AND DETROIT RESTRICTION
CASE

NOTICE OF ORAL ARGUMENT

Notice is hereby given, pursuant to the provisions of the Civil Aeronautics Act of 1938, as amended, that oral argument in the above-entitled proceeding is assigned to be held on June 6, 1956, at 10:00 a. m., e. d. s. t., in Room 5042, Commerce Building, Constitution Avenue, between Fourteenth and Fifteenth Streets NW., Washington, D. C., before the Board.

Dated at Washington, D. C., May 24, 1956.

[SEAL] FRANCIS W. BROWN,
Chief Examiner.

[F. R. Doc. 56-4268; Filed, May 28, 1956;
8:49 a. m.]

[Docket Nos. 6881 et al.; 6901 et al.]

FIRST CLASS AND OTHER PREFERENTIAL
MAIL RATES (EAST) AND (WEST)

NOTICE OF CANCELLATION OF ORAL ARGUMENT

Notice is hereby given, pursuant to the provisions of the Civil Aeronautics Act of 1938, as amended, that oral argument in the above-entitled proceeding is cancelled.

Dated at Washington, D. C., May 24, 1956.

[SEAL] FRANCIS W. BROWN,
Chief Examiner.

[F. R. Doc. 56-4209; Filed, May 28, 1956;
8:49 a. m.]

[Docket No. 8008]

SCOPE OF GENERAL PASSENGER FARE
INVESTIGATION

NOTICE OF ORAL PRESENTATION

Notice is hereby given, pursuant to the provisions of the Civil Aeronautics Act of 1938, as amended, that oral presentation in the above-entitled proceeding with respect to the basic issues to be included in the investigation instituted by Order No. E-10279 and the nature of the modifications, if any, which should be made in the scope of such investigation, is assigned to be held on June 12, 1956, at 10:00 a. m., e. d. s. t., in Room 5042, Commerce Building, Constitution Avenue, between 14th and 15th Streets NW., Washington, D. C., before the Board. Any party desiring to appear at the oral presentation should notify the Office of the Chief Examiner on or before June 1, 1956.

Dated at Washington, D. C., May 25, 1956.

[SEAL] FRANCIS W. BROWN,
Chief Examiner.

[F. R. Doc. 56-4262; Filed, May 28, 1956;
8:54 a. m.]

FEDERAL POWER COMMISSION

[Docket No. G-10435]

MOUND CO.

ORDER SUSPENDING PROPOSED CHANGES
IN RATES

Mound Company (Applicant) on April 26, 1956, tendered for filing proposed

changes in presently effective rate schedules for sales subject to the jurisdiction of the Commission. The proposed changes, which constitute increased rates and charges, are contained in the following designated filing which is proposed to become effective on the date shown:

*Description; Purchaser; Rate Schedule Designation; Effective Date*¹

Notice of change, undated; Texas Gas Pipe Line Corporation; Supplement No. 4 to Applicant's FPC Gas Rate Schedule No. 1; June 1, 1956.

The increased rates and charges proposed in the aforesaid filing have not been shown to be justified, and may be unjust, unreasonable, unduly discriminatory, or preferential, or otherwise unlawful.

The Commission finds: It is necessary and proper in the public interest and to aid in the enforcement of the provisions of the Natural Gas Act that the Commission enter upon a hearing concerning the lawfulness of the said proposed changes, and that the above-designated supplement be suspended and the use thereof deferred as hereinafter ordered.

The Commission orders:

(A) Pursuant to the authority contained in sections 4 and 15 of the Natural Gas Act and the Commission's general rules and regulations (18 CFR Chapter I), a public hearing be held upon a date to be fixed by notice from the Secretary concerning the lawfulness of said proposed changes in rates and charges; and, pending such hearing and decision thereon, the above-designated supplement be and the same hereby is suspended and the use thereof deferred until November 1, 1956, and until such further time as it is made effective in the manner prescribed by the Natural Gas Act.

(B) Neither the supplement hereby suspended nor the rate schedule sought to be altered thereby, shall be changed until this proceeding has been disposed of or until the period of suspension has expired, unless otherwise ordered by the Commission.

(C) Interested State commissions may participate as provided by §§ 1.8 and 1.37 (f) (18 CFR 1.8 and 1.37 (f)) of the Commission's rules of practice and procedure.

Issued: May 22, 1956.

By the Commission.²

[SEAL] LEON M. FUQUAY,
Secretary.

[F. R. Doc. 56-4186; Filed, May 28, 1956;
8:45 a. m.]

[Docket No. G-10436]

STANOLIND OIL AND GAS CO.

ORDER SUSPENDING PROPOSED CHANGES
IN RATES

Stanolind Oil and Gas Company (Applicant) on April 26, 1956, tendered for

¹ The stated effective date is the first day after expiration of the required thirty days' notice, or the effective date proposed by Applicant if later.

² Commissioner Digby dissenting.

filing proposed changes in presently effective rate schedules for sales subject to the jurisdiction of the Commission. The proposed changes, which constitute increased rates and charges, are contained in the following designated filing which is proposed to become effective on the date shown:

*Description; Purchaser; Rate Schedule Designation; Effective Date*¹

Notice of change, dated April 24, 1956; Texas Gas Pipe Line Corporation; Supplement No. 4 to Applicant's FPC Gas Rate Schedule No. 3; June 1, 1956.

The increased rates and charges proposed in the aforesaid filing have not been shown to be justified, and may be unjust, unreasonable, unduly discriminatory, or preferential, or otherwise unlawful.

The Commission finds: It is necessary and proper in the public interest and to aid in the enforcement of the provisions of the Natural Gas Act that the Commission enter upon a hearing concerning the lawfulness of the said proposed changes, and that the above-designated supplement be suspended and the use thereof deferred as hereinafter ordered.

The Commission orders:

(A) Pursuant to the authority contained in sections 4 and 15 of the Natural Gas Act and the Commission's general rules and regulations (18 CFR Chapter I), a public hearing be held upon a date to be fixed by notice from the Secretary concerning the lawfulness of said proposed changes in rates and charges; and, pending such hearing and decision thereon, the above-designated supplement be and the same hereby is suspended and the use thereof deferred until November 1, 1956, and until such further time as it is made effective in the manner prescribed by the Natural Gas Act.

(B) Neither the supplement hereby suspended nor the rate schedule sought to be altered thereby, shall be changed until this proceeding has been disposed of or until the period of suspension has expired, unless otherwise ordered by the Commission.

(C) Interested State commissions may participate as provided by §§ 1.8 and 1.37 (f) (18 CFR 1.8 and 1.37 (f)) of the Commission's rules of practice and procedure.

Issued: May 22, 1956.

By the Commission.²

[SEAL] LEON M. FUQUAY,
Secretary.

[F. R. Doc. 56-4187; Filed, May 28, 1956;
8:45 a. m.]

[Docket No. G-10437]

F. A. CALLERY, INC.

ORDER SUSPENDING PROPOSED CHANGES
IN RATES

F. A. Callery, Inc. (Applicant), on April 27, 1956, tendered for filing proposed changes in presently effective rate schedules for sales subject to the jurisdiction of the Commission. The proposed

changes, which constitute increased rates and charges, are contained in the following designated filing which is proposed to become effective on the date shown:

*Description; Purchaser; Rate Schedule Designation; Effective Date*¹

Notice of change, dated April 25, 1956; Texas Gas Pipe Line Corporation; Supplement No. 2 to Applicant's FPC Gas Rate Schedule No. 1; June 1, 1956.

The increased rates and charges proposed in the aforesaid filing have not been shown to be justified, and may be unjust, unreasonable, unduly discriminatory, or preferential, or otherwise unlawful.

The Commission finds: It is necessary and proper in the public interest and to aid in the enforcement of the provisions of the Natural Gas Act that the Commission enter upon a hearing concerning the lawfulness of the said proposed changes, and that the above-designated supplement be suspended and the use thereof deferred as hereinafter ordered.

The Commission orders:

(A) Pursuant to the authority contained in sections 4 and 15 of the Natural Gas Act and the Commission's general rules and regulations (18 CFR Chapter I), a public hearing be held upon a date to be fixed by notice from the Secretary concerning the lawfulness of said proposed changes in rates and charges; and, pending such hearing and decision thereon, the above-designated supplement be and the same hereby is suspended and the use thereof deferred until November 1, 1956, and until such further time as it is made effective in the manner prescribed by the Natural Gas Act.

(B) Neither the supplement hereby suspended nor the rate schedule sought to be altered thereby, shall be changed until this proceeding has been disposed of or until the period of suspension has expired, unless otherwise ordered by the Commission.

(C) Interested State commissions may participate as provided by §§ 1.8 and 1.37 (f) (18 CFR 1.8 and 1.37 (f)) of the Commission's rules of practice and procedure.

Issued: May 22, 1956.

By the Commission.²

[SEAL] LEON M. FUQUAY,
Secretary.

[F. R. Doc. 56-4188; Filed, May 28, 1956;
8:45 a. m.]

[Docket No. G-10438]

MCCARTHY OIL & GAS CORP.

ORDER SUSPENDING PROPOSED CHANGES IN
RATES

McCarthy Oil & Gas Corporation (Applicant) on April 27, 1956, tendered for filing proposed changes in presently effective rate schedules for sales subject to the jurisdiction of the Commission. The proposed changes, which constitute increased rates and charges, are contained in the following designated filings which are proposed to become effective on the date shown:

*Description; Purchaser; Rate Schedule
Designation; Effective Date*

Notice of change, dated April 24, 1956;
Texas Gas Pipe Line Corporation; Supplement
No. 9 to Applicant's FPC Gas Rate
Schedule No. 1; June 1, 1956.

Notice of change, dated April 24, 1956;
Texas Gas Pipe Line Corporation; Supplement
No. 10 to Applicant's FPC Gas Rate
Schedule No. 1; June 1, 1956.

The increased rates and charges proposed in the aforesaid filings have not been shown to be justified, and may be unjust, unreasonable, unduly discriminatory, or preferential, or otherwise unlawful.

The Commission finds: It is necessary and proper in the public interest and to aid in the enforcement of the provisions of the Natural Gas Act that the Commission enter upon a hearing concerning the lawfulness of the said proposed changes and that the above-designated supplements be suspended and the use thereof deferred as hereinafter ordered.

The Commission orders:

(A) Pursuant to the authority contained in sections 4 and 15 of the Natural Gas Act and the Commission's general rules and regulations (18 CFR Chapter 1), a public hearing be held upon a date to be fixed by notice from the Secretary concerning the lawfulness of said proposed changes in rates and charges; and pending such hearing and decision thereon, the above-designated supplements be and the same hereby are suspended and the use thereof deferred until November 1, 1956, and until such further time as they are made effective in the manner prescribed by the Natural Gas Act.

(B) Neither the supplements hereby suspended nor the rate schedule sought to be altered thereby, shall be changed until this proceeding has been disposed of or until the period of suspension has expired, unless otherwise ordered by the Commission.

(C) Interested State commissions may participate as provided by §§ 1.8 and 1.37 (f) of the Commission's rules of practice and procedure (18 CFR 1.8 and 1.37 (f)).

Issued: May 22, 1956.

By the Commission.²

[SEAL] LEON M. FUQUAY,
Secretary.

[F. R. Doc. 56-4189; Filed, May 28, 1956;
8:45 a. m.]

[Docket No. G-5999]

SATURN OIL & GAS CO., INC.

ORDER REFERRING PROCEEDING TO
PRESIDING EXAMINER

Saturn Oil & Gas Company, Inc.
(Saturn), filed on November 26, 1954,
an application for the conditional issuance of a certificate of public convenience

¹ The stated effective date is the first day after expiration of the required thirty days' notice, or the effective date proposed by Applicant if later.

² Commissioner Digby dissenting.

and necessity covering its sales of natural gas to two interstate pipeline companies. The matter of said application, Docket No. G-5999, was consolidated with a number of other applications for hearing ordered to be held on May 7, 1956. The notice of said hearing provided for the disposition of all the consolidated matters under § 1.30 (c) (4) of the Commission's rules of practice and procedure, in the event of a non-contested hearing.

Counsel for Saturn appeared at the hearing held on May 7, 1956, and moved orally for the severance of its application from the consolidated proceeding and the dismissal thereof. The motion to dismiss was filed in writing with the Commission on May 7, 1956.

The Presiding Examiner has referred both of said motions to the Commission. By order of the Commission issued May 21, 1956, the application of Saturn was severed from said consolidated proceedings. It is in the public interest that the motion of Saturn to dismiss its application be referred to the Presiding Examiner, to be ruled upon as part of his initial decision submitted after the conclusion of the hearing on said application.

The Commission orders: The motion to dismiss hereinabove described is hereby referred to the Presiding Examiner to be ruled upon as a part of his initial decision submitted after the conclusion of the hearing and the completion of the record herein. A public hearing shall be held on June 7, 1956, beginning at 9:30 a. m., e. d. s. t., in a hearing room of the Federal Power Commission, 441 G Street NW., Washington, D. C., concerning the matters involved and the issues presented by the above application and the said motion to dismiss.

Issued: May 22, 1956.

By the Commission.

[SEAL] LEON M. FUQUAY,
Secretary.

[F. R. Doc. 56-4190; Filed, May 28, 1956;
8:45 a. m.]

[Docket No. G-10439]

PURE OIL CO.

ORDER SUSPENDING PROPOSED CHANGES
IN RATES

The Pure Oil Company (Applicant) on April 27, 1956, tendered for filing proposed changes in presently effective rate schedules for sales subject to the jurisdiction of the Commission. The proposed changes, which constitute increased rates and charges, are contained in the following designated filing which is proposed to become effective on the date shown:

*Description; Purchaser; Rate Schedule
Designation; Effective Date*

Notice of change, undated; Phillips Petroleum Company; Supplement No. 4 to Applicant's FPC Gas Rate Schedule No. 19; May 28, 1956.

The increased rates and charges proposed in the aforesaid filing have not been shown to be justified, and may be unjust, unreasonable, unduly discriminatory, or preferential, or otherwise unlawful.

The Commission finds: It is necessary and proper in the public interest and to aid in the enforcement of the provisions of the Natural Gas Act that the Commission enter upon a hearing concerning the lawfulness of the said proposed changes, and that the above-designated supplement be suspended and the use thereof deferred as hereinafter ordered.

The Commission orders:

(A) Pursuant to the authority contained in sections 4 and 15 of the Natural Gas Act and the Commission's general rules and regulations (18 CFR Chapter 1), a public hearing be held upon a date to be fixed by notice from the Secretary concerning the lawfulness of said proposed changes in rates and charges; and, pending such hearing and decision thereon, the above-designated supplement be and the same hereby is suspended and the use thereof deferred until October 28, 1956, and until such further time as it is made effective in the manner prescribed by the Natural Gas Act.

(B) Neither the supplement hereby suspended nor the rate schedule sought to be altered thereby, shall be changed until this proceeding has been disposed of or until the period of suspension has expired, unless otherwise ordered by the Commission.

(C) Interested State commissions may participate as provided by §§ 1.8 and 1.37 (f) (18 CFR 1.8 and 1.37 (f)) of the Commission's rules of practice and procedure.

Issued: May 22, 1956.

By the Commission.²

[SEAL] LEON M. FUQUAY,
Secretary.

[F. R. Doc. 56-4191; Filed, May 28, 1956;
8:46 a. m.]

[Docket Nos. G-5298 et al., G-5317]

SKELLY OIL CO.

NOTICE OF SEVERANCE OF HEARING ON APPLICATION FOR CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

MAY 23, 1956.

Take notice—that the hearing now scheduled for June 4, 1956, upon the application for certificate of public convenience and necessity filed in Docket No. G-5317, which was consolidated with the applications in Docket Nos. G-5298 et al., is hereby severed from the consolidated dockets aforesaid and is hereby postponed to a date to be hereafter fixed by further notice.

[SEAL] LEON M. FUQUAY,
Secretary.

[F. R. Doc. 56-4205; Filed, May 28, 1956;
8:48 a. m.]

[Docket No. G-10126]

UNITED GAS PIPE LINE CO.

NOTICE OF APPLICATION AND DATE OF HEARING

MAY 23, 1956.

Take notice that United Gas Pipe Line Company (Applicant), a Delaware corporation with principal place of business at 1525 Fairfield Avenue, Shreveport, Louisiana, filed, on March 20, 1956, an application for a certificate of public convenience and necessity, pursuant to section 7 (c) of the Natural Gas Act, authorizing Applicant to render service as hereinafter described, subject to the jurisdiction of the Commission, all as more fully represented in the application which is on file with the Commission and open for public inspection.

Applicant proposes to continue to operate, as an integral part of its existing natural gas system, certain existing natural gas facilities which are necessary to the partial delivery and direct sale of natural gas in interstate commerce by Applicant to Newport Industries, Incorporated (Newport) in daily volumes up to a maximum of approximately 7,080 Mcf at 14.73 psia in a proportionately interruptible basis pursuant to a 6 year fuel requirements contract dated March 8, 1956, for use in Newport's naval stores plant and auxiliaries thereto located in Pensacola, Escambia County, Florida.

The application states that Applicant is presently delivering natural gas to City of Pensacola, Florida (Pensacola), for resale to Newport; that Applicant has entered into a Transportation Agreement with Pensacola dated February 24, 1956, under the terms of which Applicant will continue to deliver the gas requirements of Newport to Pensacola at the existing delivery point where Applicant is presently making deliveries to Pensacola and Pensacola will transport said gas through Pensacola's existing distribution facilities and deliver same to Newport for the account of Applicant; that this new arrangement will permit uniformity of rates and contract conditions as between Newport and Applicant's other direct industrial customers in the area; that this new arrangement is mutually agreeable to Applicant, Pensacola and Newport; that no increase in Applicant's total sales of gas will result as Newport is presently receiving gas from Applicant's system; that the new arrangement will not affect the aggregate quantities of gas delivered at the City Gate Stations at Pensacola; and that service to Newport will be uninterrupted.

This matter is one that should be disposed of as promptly as possible under the applicable rules and regulations and to that end:

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act, and the Commission's rules of practice and procedure, a hearing will be held on Monday, June 18, 1956 at 9:30 a. m., e. d. s. t., in a hearing room of the Federal Power Commission, 441 G Street NW., Washington, D. C., concerning the matters involved in and the issues presented by such appli-

cation: *Provided, however, that the Commission may, after a non-contested hearing, dispose of the proceedings pursuant to the provisions of § 1.30 (c) (1) or (2) of the Commission's rules of practice and procedure. Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.*

Protests or petitions to intervene may be filed with the Federal Power Commission, Washington 25, D. C., in accordance with the rules of practice and procedure (18 CFR 1.8 or 1.10) on or before June 9, 1956. Failure of any party to appear at and participate in the hearing shall be construed as waiver of and concurrence in omission herein of the intermediate decision procedure in cases where a request therefor is made.

[SEAL]

LEON M. FUQUAY,
Secretary.[F. R. Doc. 56-4206; Filed, May 28, 1956;
8:49 a. m.]

GENERAL SERVICES ADMINISTRATION

DEPUTY ADMINISTRATOR OF GENERAL SERVICES

DELEGATION OF AUTHORITY TO MANAGE NICKEL PRODUCING AND PROCESSING FACILITIES AND ACTIVITIES RELATING TO NICARO NICKEL PROJECT IN ORIENTE PROVINCE, CUBA

1. Pursuant to the authority vested in me by the provisions of the Federal Property and Administrative Services Act of 1949 (53 Stat. 377; 40 U. S. C. 471-514, 41 U. S. C. 251-260), the Defense Production Act of 1950 (64 Stat. 798; 50 U. S. C. App. 2061-2166), the National Industrial Reserve Act of 1948 (62 Stat. 1225; 50 U. S. C. 451-462), the Strategic and Critical Materials Stock Piling Act (60 Stat. 596; 50 U. S. C. 98-98h), and Executive Order No. 10480 (18 F. R. 4939), all as amended, authority is hereby delegated to the Deputy Administrator of General Services to manage the Nicaro nickel producing and processing facilities and activities administered by the Government in Oriente Province, Cuba, and any and all other facilities and activities related thereto regardless of where located. In furtherance thereof, the Deputy Administrator of General Services is fully authorized (a) to negotiate, execute, administer, amend, and terminate any and all contracts, letters of intent, deeds, and other contractual instruments relating to the Nicaro nickel project, (b) to provide for the performance on behalf of the Administrator or Deputy Administrator of General Services of other functions relating thereto by the Special Assistant to the Administrator (Nicaro Project), (c) to consult with and obtain expert advice from said Special Assistant on all matters relating to the Nicaro nickel project, and (d) to take such other action in connection therewith as may be necessary and lawful. In the absence of the Deputy Administrator of General Services, all contractual instruments and all

matters involving questions of policy shall be referred to the Administrator of General Services for execution or resolution.

2. The authority so delegated shall be exercised in accordance with applicable directives and certificates issued by the Secretary of Defense under said National Industrial Reserve Act of 1948, and by the Director of the Office of Defense Mobilization under said Strategic and Critical Materials Stock Piling Act and said Defense Production Act of 1950.

3. The functions and authorities heretofore vested in the Nickel-Graphite Committee and not covered by the foregoing paragraphs will be performed and exercised as may be appropriate under the general organizational pattern, or under the direction of the respective heads of the services and staff offices, of the General Services Administration.

4. The delegation of authority entitled "Nickel-Graphite Committee—Delegation of Authority with Respect to Duties and Functions" and dated August 25, 1953 (18 F. R. 5285), and all amendments thereto, are hereby rescinded.

5. This delegation of authority shall be effective upon publication in the FEDERAL REGISTER.

Dated: May 25, 1956.

FRANKLIN G. FLOETE,
Administrator.[F. R. Doc. 56-4253; Filed, May 28, 1956;
8:53 a. m.]

SECURITIES AND EXCHANGE COMMISSION

JOHN R. WEERTS

ORDER FOR PROCEEDINGS AND NOTICE OF HEARING

At a regular session of the Securities and Exchange Commission held at its office in the city of Washington, D. C., on the 22d day of May 1956.

In the matter of John R. Weerts, dba John R. Weerts Investment Broker, 233 Plaza Building, 245 S. E. First St., Miami, Florida.

I. The Commission's public official files disclose that John R. Weerts, a sole proprietor, dba John R. Weerts Investment Broker, hereinafter referred to as registrant, is registered as a broker-dealer pursuant to section 15 (b) of the Securities Exchange Act of 1934.

II. The Records Officer of the Commission has filed with the Commission a statement, a copy of which is attached hereto and made a part hereof, stating that registrant did not file with the Commission reports of his financial condition during the calendar year 1955, as required by section 17 (a) of the Securities Exchange Act of 1934 and Rule X-17A-5 adopted thereunder.

III. The information reported to the Commission by its Records Officer as set forth in Paragraph II hereof tends, if true, to show that registrant violated section 17 (a) of the Securities Exchange Act of 1934 and Rule X-17A-5 adopted under said section.

* Filed as part of the original document.

IV. The Commission, having considered the aforesaid information, deems it necessary and appropriate in the public interest and for the protection of investors that proceedings be instituted to determine:

(a) Whether the statement referred to in Paragraph II hereof is true;

(b) Whether registrant has wilfully violated section 17 (a) of the Securities Exchange Act of 1934 and Rule X-17A-5 adopted under said section;

(c) Whether, pursuant to section 15 (b) of the Securities Exchange Act of 1934, it is in the public interest to revoke registration of registrant; and

(d) Whether, pursuant to section 15 (b) of the Securities Exchange Act of 1934, pending final determination, it is necessary or appropriate in the public interest or for the protection of investors to suspend the registration of registrant.

V. It is ordered, That registrant be given an opportunity for hearing as set forth in Paragraph IV hereof on the 25th day of June, 1956 at 10 a. m., at the main office of the Securities and Exchange Commission, located at 425 Second Street NW., Washington 25, D. C., before a Hearing Examiner to be designated by the Commission. On such date the Hearing Room Clerk in Room 193, North Building, will advise the parties and the Hearing Examiner as to the room in which such hearing will be held. The Commission will consider any motion with respect to a change of place of said hearing if said motion is filed with the Secretary of the Commission on or before June 11, 1956. Upon completion of any such hearing in this matter the Hearing Examiner shall prepare a recommended decision pursuant to Rule IX of the rules of practice unless such decision is waived.

It is further ordered, That in the event registrant does not appear personally or through a representative at the time and place herein set or as otherwise ordered, the Hearing Room Clerk shall file with the Records Officer, of the Commission a written statement to that effect and thereupon the Commission will take the record under advisement for decision.

This order and notice shall be served on registrant personally or by registered mail forthwith, and published in the FEDERAL REGISTER not later than fifteen (15) days prior to June 25, 1956.

In the absence of an appropriate waiver, no officer or employee of the Commission engaged in the performance of investigative or prosecuting functions in this or any factually related proceeding will be permitted to participate or advise in the decision upon the matter except as witness or counsel in proceedings held pursuant to notice. Since this proceeding is not "rule making" within the meaning of section 4 (c) of the Administrative Procedure Act, it is not deemed to be subject to the provisions of the section delaying the effective date of any final Commission action.

By the Commission.

[SEAL]

ORVAL L. DuBOIS,
Secretary.

[P. R. Doc. 56-4201; Filed, May 28, 1956;
8:47 a. m.]

CHARLES R. MORGAN

ORDER FOR PROCEEDINGS AND NOTICE OF
HEARING

At a regular session of the Securities and Exchange Commission held at its office in the city of Washington, D. C., on the 22d day of May 1956.

In the matter of Charles R. Morgan, 322 Mercantile Building, Knoxville, Tennessee.

I. The Commission's public official files disclose that Charles R. Morgan, a sole proprietor, hereinafter referred to as registrant, is registered as a broker-dealer pursuant to section 15 (b) of the Securities Exchange Act of 1934.

II. The Records Officer of the Commission has filed with the Commission a statement, a copy of which is attached hereto and made a part hereof,¹ stating that registrant did not file with the Commission reports of his financial condition during the calendar year 1955 as required by section 17 (a) of the Securities Exchange Act of 1934 and Rule X-17A-5 adopted thereunder.

III. The information reported to the Commission by its Records Officer as set forth in Paragraph II hereof tends, if true, to show that registrant violated section 17 (a) of the Securities Exchange Act of 1934 and Rule X-17A-5 adopted under said section.

IV. The Commission, having considered the aforesaid information, deems it necessary and appropriate in the public interest and for the protection of investors that proceedings be instituted to determine:

(a) Whether the statement referred to in Paragraph II hereof is true;

(b) Whether registrant has wilfully violated section 17 (a) of the Securities Exchange Act of 1934 and Rule X-17A-5 adopted under said section;

(c) Whether, pursuant to section 15 (b) of the Securities Exchange Act of 1934, it is in the public interest to revoke registration of registrant; and

(d) Whether, pursuant to section 15 (b) of the Securities Exchange Act of 1934, pending final determination, it is necessary or appropriate in the public interest or for the protection of investors to suspend the registration of registrant.

V. It is ordered, That registrant be given an opportunity for hearing as set forth in Paragraph IV hereof on the 25th day of June, 1956 at 10 a. m., at the main office of the Securities and Exchange Commission, located at 425 Second Street NW., Washington 25, D. C., before a Hearing Examiner to be designated by the Commission. On such date the Hearing Room Clerk in Room 193, North Building, will advise the parties and the Hearing Examiner as to the room in which such hearing will be held. The Commission will consider any motion with respect to a change of place of said hearing if said motion is filed with the Secretary of the Commission on or before June 11, 1956. Upon completion of any such hearing in this matter the Hearing Examiner shall prepare a recommended decision pursuant to Rule IX of the rules of practice unless such decision is waived.

¹ Filed as part of the original document.

It is further ordered, That in the event registrant does not appear personally or through a representative at the time and place herein set or as otherwise ordered, the Hearing Room Clerk shall file with the Records Officer of the Commission a written statement to that effect and thereupon the Commission will take the record under advisement for decision.

This order and notice shall be served on registrant personally or by registered mail forthwith, and published in the FEDERAL REGISTER not later than fifteen (15) days prior to June 25, 1956.

In the absence of an appropriate waiver, no officer or employee of the Commission engaged in the performance of investigative or prosecuting functions in this or any factually related proceeding will be permitted to participate or advise in the decision upon the matter except as witness or counsel in proceedings held pursuant to notice. Since this proceeding is not "rule making" within the meaning of section 4 (c) of the Administrative Procedure Act, it is not deemed to be subject to the provisions of the section delaying the effective date of any final Commission action.

By the Commission.

[SEAL]

ORVAL L. DuBOIS,
Secretary.

[P. R. Doc. 56-4202; Filed, May 28, 1956;
8:47 a. m.]

JAMES W. TWOHIG

ORDER FOR PROCEEDINGS AND NOTICE OF
HEARING

MAY 22, 1956.

In the matter of James W. Twohig, a sole proprietor, dba James W. Twohig and Company, Box 540, Alderson, West Virginia.

I. The Commission's public official files disclose that James W. Twohig, a sole proprietor, dba James W. Twohig and Company, hereinafter referred to as registrant, is registered as a broker-dealer pursuant to section 15 (b) of the Securities Exchange Act of 1934, and is a member of the National Association of Securities Dealers, Inc., a national securities association, registered pursuant to section 15A of said act.

II. The Records Officer of the Commission has filed with the Commission a statement, a copy of which is attached hereto and made a part hereof,¹ stating that registrant did not file with the Commission reports of his financial condition during the calendar year 1955, as required by section 17 (a) of the Securities Exchange Act of 1934 and Rule X-17A-5 adopted thereunder.

III. The information reported to the Commission by its Records Officer as set forth in Paragraph II hereof tends, if true, to show that registrant violated section 17 (a) of the Securities Exchange Act of 1934 and Rule X-17A-5 adopted under said section.

IV. The Commission, having considered the aforesaid information, deems

it necessary and appropriate in the public interest and for the protection of investors that proceedings be instituted to determine:

(a) Whether the statement referred to in Paragraph II hereof is true;

(b) Whether registrant has wilfully violated section 17 (a) of the Securities Exchange Act of 1934 and Rule X-17A-5 adopted under said section;

(c) Whether, pursuant to section 15 (b) of the Securities Exchange Act of 1934, it is in the public interest to revoke registration of registrant;

(d) Whether, pursuant to section 15 (b) of the Securities Exchange Act of 1934, pending final determination, it is necessary or appropriate in the public interest or for the protection of investors to suspend the registration of registrant; and

(e) Whether, pursuant to section 15A (f) (2) of the Securities Exchange Act of 1934, it is necessary or appropriate in the public interest or for the protection of investors or to carry out the purposes of said section, to suspend for a period not to exceed twelve (12) months or to expel registrant from membership in the National Association of Securities Dealers, Inc.

V. *It is ordered*, That registrant be given an opportunity for hearing as set forth in paragraph IV hereof at 10 a. m. on the 25th day of June 1956, at the main office of the Securities and Exchange Commission, located at 425 Second Street NW., Washington 25, D. C., before a Hearing Examiner to be designated by the Commission. At such time the Hearing Room Clerk in Room 193, North Building, will advise the parties and the Hearing Examiner as to the room in which such hearing will be held. The Commission will consider any motion with respect to a change of place of said hearing if said motion is filed with the Secretary of the Commission on or before June 11, 1956. Upon completion of any such hearing in this matter the Hearing Examiner shall prepare a recommended decision pursuant to Rule IX of the rules

of practice unless such decision is waived.

It is further ordered, That in the event registrant does not appear personally or through a representative at the time and place herein set or as otherwise ordered, the Hearing Room Clerk shall file with the Records Officer of the Commission a written statement to that effect and thereupon the Commission will take the record under advisement for decision.

This order and notice shall be served on registrant personally or by registered mail forthwith, and published in the FEDERAL REGISTER not later than fifteen (15) days prior to June 25, 1956.

In the absence of an appropriate waiver, no officer or employee of the Commission engaged in the performance of investigative or prosecuting functions in this or any factually related proceeding will be permitted to participate or advise in the decision upon the matter except as witness or counsel in proceedings held pursuant to notice. Since this proceeding is not "rule making" within the meaning of section 4 (c) of the Administrative Procedure Act, it is not deemed to be subject to the provisions of the section delaying the effective date of any final Commission action.

By the Commission.

[SEAL]

ORVAL L. DuBOIS,
Secretary.

[F. R. Doc. 56-4203; Filed, May 28, 1956;
8:48 a. m.]

[File No. 1-1665]

CINCINNATI MERCHANDISE WAREHOUSES,
Inc.

NOTICE OF APPLICATION TO STRIKE FROM
LISTING AND REGISTRATION, AND OF
OPPORTUNITY FOR HEARING

MAY 23, 1956.

Cincinnati Stock Exchange has made application, pursuant to section 12 (d) of the Securities Exchange Act of 1934 and Rule X-12D2-1 (b) promulgated thereunder, to strike the above named

security from listing and registration thereon.

The reasons alleged in the application for striking this security from listing and registration include the following:

The Cincinnati Stock Exchange has been informed by the issuer that the number of shares of stock outstanding has been reduced to 5,998 and the number of shareholders has decreased to 153. The records of The Cincinnati Stock Exchange indicate that only 79 shares of this issue were traded on the exchange in 1954 and 199 shares in 1955. The Board of Trustees of the exchange is of the opinion that there is not sufficient stock available to make an exchange market in this issue. The Board of Directors of the issuer state that "In light of the foregoing facts we believe that continuation of the listing of our stock on an Exchange is of no advantage to the Shareholders of the Corporation or prospective investors and no longer justified."

Upon receipt of a request, on or before June 12, 1956, from any interested person for a hearing in regard to terms to be imposed upon the delisting of this security, the Commission will determine whether to set the matter down for hearing. Such request should state briefly the nature of the interest of the person requesting the hearing and the position he proposes to take at the hearing with respect to imposition of terms. In addition, any interested person may submit his views or any additional facts bearing on this application by means of a letter addressed to the Secretary of the Securities and Exchange Commission, Washington 25, D. C. If no one requests a hearing on this matter, this application will be determined by order of the Commission on the basis of the facts stated in the application and other information contained in the official file of the Commission pertaining to the matter.

By the Commission.

[SEAL]

ORVAL L. DuBOIS,
Secretary.

[F. R. Doc. 56-4204; Filed, May 28, 1956;
8:48 a. m.]